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IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-647

KAREN MARCHIORO, ET AL.,
Appellants,

v.

NEALE V. CHANEY, ET AL.,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF WASHINGTON

JURISDICTIONAL STATEMENT

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TABLE OF CONTENTS

Page

Opinions Below 1

Jurisdiction 1

Question Presented 2

Constitutional Provisions and Statutes Involved 2

Statement of the Case 3

The Question Presented Is Substantial 9

Conclusion 16

Appendices:

A. Opinion and Mandate of the Supreme Court of Washington A-1

B. Opinion of the King County Superior Court B-1

C. Order and Judgment of the King County Superior Court C-1

D. Notice of Appeal D-1

E. RCW 29.42.020 ..... E-1

TABLE OF AUTHORITIES

Bates v. *Little Rock*, 361 U.S. 516 (1960) 11, 14, 15

Brotherhood of Railroad Trainmen v. *Virginia State Bar*, 377 U.S. 1 (1964) 10-11

Cousins v. Wigoda, 419 U.S. 477, (1975) .. 10, 11, 13, 14, 16

Cunningham v. *Washington State Democratic Committee*, Civ. No. C75-901S (W.D. Wash., filed Dec. 29, 1975 4

Dahnke-Walker Milling Co. v. *Bondurant*, 257 U.S. 282 (1921) 2

Fahey v. *Darigan*, 405 F. Supp. 1386 (D.R.I. 1975) 4, 12-13, 16

Hunt v. *Democratic Party of Oklahoma*, 439 F. Supp. 788 (N.D. Okla. 1977) 16

Page

King County Republican Central Committee v. *Republican State Committee*, 79 Wn.2d 202, 484 P.2d 387 (1971) 4

Kusper v. Pontikes, 414 U.S. 51 (1973) 10, 14, 15

Lynch v. *Torquato*, 343 F.2d 370 (CA3 1965)..... 16

Marchioro v. Chaney, 90 Wn.2d 298, 582 P.2d 487 (1978) .....passim

Moore v. Ogilvie, 394 U.S. 814 (1969)..... 15

NAACP v. *Alabama ex rel. Patterson*, 357 U.S. 449 (1958) 11, 14

NAACP v. *Button*, 371 U.S. 415 (1963)..... 11

Redfearn v. *Delaware Republican State Committee*, 502 F.2d 1123 (CA 1974), *on remand*, 393 F. Supp. 372 (1975), *aff'd*, 524 F.2d 1403 (1975), *cert. granted*, 426 U.S. 919 (1976), *vacated in light of intervening legislation*, 429 U.S. 809 (1976) 16

Ripon Society v. *National Republican Party*, 525 F.2d 567 (CADC 1975), *cert. denied*, 424 U.S. 933 (1976) 11, 12, 13, 16

Seergy v. *King County Republican Committee*, 459 F.2d 308 (CA2 1972) 4

Sweezy v. *New Hampshire*, 354 U.S. 234 (1957)..... 11

STATUTES AND CONSTITUTIONAL PROVISIONS

28 U.S.C. §1257(2) 1

RCW Ch. 7.24 1

RCW 29.18.150 4

RCW 29.42.020 .....passim

RCW 29.42.030 6

United States Constitution, Amend. I.....passim

United States Constitution, Amend. XIV .....passim

Washington Constitution, art. XXXI (Equal Rights Amendment) 6

MISCELLANEOUS

Page

Charter of the Democratic Party of Washington....3, 4, 5, 8

State of Washington, *Pocket Data Book*..... 5

Tribe, *American Constitutional Law* (1978)..... 14

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OPINIONS BELOW

The opinion of the Supreme Court of the State of Washington (App. A) is reported at 90 Wn.2d 298 and at 582 P.2d 487. The oral opinion of the Supreme Court for King County (App. B) is unreported.

JURISDICTION

This action was brought under the Washington Declaratory Judgment Act, RCW ch. 7.24, seeking, *inter alia*, a declaration that a Washington statute, RCW 29.42.020, violates the First and Fourteenth Amendments of the

United States Constitution insofar as the statute operates to bar the Washington State Democratic Party from determining the size and geographic composition of its Party State Committee. Summary judgment for appellants on this claim was granted by the King County Superior Court (App. C) and reversed by the Washington Supreme Court in an opinion filed July 20, 1978 (App. A).

Appellants filed a notice of appeal in the Washington Supreme Court and in the King County Superior Court on October 13, 1978 (App. D). This Court has jurisdiction of this appeal pursuant to 28 U.S.C. §1257(2). *Dahnke-Walker Milling Co.* v. *Bondurant*, 257 U.S. 282 (1921); *Cohen* v. *California*, 403 U.S. 15 (1971).

QUESTION PRESENTED

Can a state constitutionally deny a political party the right to control the size and geographic composition of its state committee?

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

This case involves the First and Fourteenth Amendments to the United States Constitution and RCW 29.42.020, which provides in pertinent part:

> RCW 29.42.020. State Committee. The state committee of each major political party shall consist of one committeeman and one committeewoman from each county elected by the county committee at its organization meeting.

The complete text of this statute is reproduced in Appendix E.

STATEMENT OF THE CASE

Appellants, members of the Washington State Democratic Party, challenge the constitutionality of a state statute as applied to prevent the Washington State Democratic Party from expanding the size of its state committee to provide more equal representation for all party members. Four appellants, members of the expanded Democratic State Committee elected pursuant to the mandate of the party charter, have been refused participation in the State Committee on the grounds that the statute forbids it. All appellants challenge the statute as an unconstitutional infringement of their First Amendment rights of freedom of association.[1]

The Washington State Democratic Party, like party organizations in many states, is a hierarchy containing a number of related party bodies. Under party rules and state law, the State Party Convention is the supreme party authority.[2] The Convention meets every two years, exercises plenary authority over party organization and policies, and elects delegates to National Democratic Party meetings.

Between State Conventions, the Democratic State Com-

1. All appellants are members of the Democratic Party of the State of Washington and have been active in the Party for a long time. Appellants Marchioro, Baarsma, and Schroeder are the party chairpersons for the three most populous counties in the State of Washington. Appellants Fithian, Evans, Pierce, and Reid are duly elected legislative district representatives to the State Committee who have been refused their seats on the basis of the challenged statute. Appellant Fisher is presently a county representative on the State Committee as permitted by the challenged statute.

2. This supremacy is mandated by the party charter. Charter of the Democratic Party of Washington, art. V(F) (5) (hereinafter "Charter"). The court below explicitly held that the Washington State Democratic Convention is the supreme State Democratic Party authority. 90 Wn.2d at 313-14 (App. A at 16-17).

mittee is the statewide party governing body.[3] It meets four times each year, exercises the party's policy-making functions, directs the party's administrative apparatus, raises and distributes funds to Democratic candidates, and seeks generally to further the party's objectives of influencing policy and electing its adherents to public office.[4] Under party rules and state law, the State Committee is subject to the overriding authority of the State Convention. *See* note 2 *supra.*

A Washington statute, RCW 29.42.020 (App. E) requires the state committees of Washington's major political parties, including the Democratic Party, to be composed of two representatives from each of the State's 39 counties, no more and no less. *See* 90 Wn.2d at 301, 308, 310 (App. A at 4, 11, 13). This composition means that the three most populous counties, containing more than 50

3. Charter, *supra* note 2, art. IV(G) (1); *see King County Republican Cent. Comm.* v. *Republican State Comm.*, 79 Wn.2d 202, 212, 484 P.2d 387, 393 (1971).

4. Although on rare occasions the State Committee has performed direct electoral functions, this case involves only the non-electoral, political functions of the Democratic State Committee. Under RCW 29.18.150 and 29.42.020, the State Committee is authorized to fill vacancies on certain party tickets, and under Wash. Const. art. II, §15, the State Committee is authorized to select nominees for certain interim legislative positions. When the Committee performs these electoral functions, it is constitutionally required to comply with the principle of one-man, one-vote. *See, e.g., Seergy v. Kings County Republican County Comm.*, 459 F.2d 308, 313-14 (CA2 1972); *Fahey* v. *Darigan*, 405 F. Supp. 1386, 1392 (D.R.I. 1975). The Committee has recognized this requirement and has stipulated to an injunction requiring adherence to one-man, one-vote principles whenever it performs electoral functions. *Cunningham* v. *Washington State Democratic Comm.*, Civ. No. C75-901 (W.D. Wash., permanent injunction entered Nov. 28, 1977).

The electoral functions of the Democratic State Committee are not involved here. Appellants make no claim that the Constitution requires the State Committee to be apportioned on one-man, one-vote principles when performing its non-electoral party functions. Appellants claim only that the Constitution protects the Party's right to *voluntarily* constitute the State Committee on a representative basis.

percent of the State's population, elect only 8 percent of the members of the State Committee, and 30 counties, containing only 23 percent of the population, control 77 percent of the State Committee membership.[5] The statutory formula thus creates a State Committee in which a small minority of party members in primarily rural counties are effectively able to control all of the policy and administrative decisions of the State Democratic Party between conventions.[6]

In 1976, the State Democratic Convention adopted a party charter provision establishing a State Committee composed of two representatives elected from each of the State's 39 counties *plus* one representative elected from each of the State's 49 legislative districts.[7] The Party's decision gives party members in the three counties containing 50 percent of the population the right to elect 27 percent of the members of the State Committee. *See* 90 Wn.2d at 318 (App. A at 21) (Horowitz, J., dissenting). Giving each legislative district its own representative also allows groups whose voices may be submerged in the election of county-wide representatives an opportunity to elect to the State Committee persons who will make their interests known.

Appellants participated in the Party's adoption of the charter provision expanding the State Committee. Appellants also participated in the Party elections for the newly

5. *See* 90 Wn.2d at 314-15 (Horowitz, J., dissenting); State of Washton, *Pocket Data Book, cited id. at* 314 n.1.

6. "[T]he vote of one Democrat in Garfield County has an influence in the state committee equal to the votes of nearly 400 Democrats in King County." 90 Wn.2d at 318 (App. A at 21) (Horowitz, J., dissenting).

7. Charter, *supra* note 2, art. IV(G) (4).

created positions, and several appellants were elected to serve as legislative district representatives on the State Committee.

When the State Committee next met, it refused to seat the newly elected legislative district representatives, including four of appellants, on the grounds that RCW 29.42.020 forbids the participation of any but two county-wide representatives per county on the Party State Committee. This refusal continues to this day.

Appellants brought suit in state court against the State Committee and its chairman, seeking, *inter alia*, a declaratory judgment that RCW 29.42.020, as applied to bar implementation of the Party's determination of the size and composition of the State Committee and to bar individual appellants from serving in their duly elected Committee positions, unconstitutionally burdens appellants' First and Fourteenth Amendment rights of freedom of association.[8] Pursuant to state law, the State of Washington was served with a copy of the complaint. The State has neither intervened nor filed an *amicus* brief in defense of the statute.

Appellants moved for partial summary judgment, and on June 15, 1977, the Superior Court for King County granted that motion, holding, *inter alia*, that the provision of RCW 29.42.020 mandating a State Committee composed only of two representatives from each county burdens appellants' First Amendment rights to freedom of association, is unsupported by any compelling state interest, and is therefore unconstitutional as applied to the Democratic Party of Washington.[9]

8. Appellants also challenged as a violation of the Washington State Equal Rights Amendment, Wash. Const. art. XXXI, the requirement of RCW 29.42.020 and .030 that the two persons elected as county delegates be one man and one woman. The Washington Supreme Court rejected this challenge. 90 Wn.2d at 308 (App. A at 11). Appellants do not seek review here of the "one man and one woman" requirements of RCW 29.42.020 and .030.

Appellees appealed, and on July 20, 1978, the Supreme Court of Washington reversed the trial court in a 5-4 decision and upheld the challenged restriction on the ground that the statute does not impose any "substantial burden" on appellants' rights to freedom of association. 90 Wn.2d at 312 (App. A at 15). The court deemed irrelevant to the question of "substantial burden" the effect of the statute in (i) flatly barring several appellants from serving in their elected positions on the State Committee and (ii) nullifying each appellant's right as a party member to elect and be represented by a State Committee composed as directed by the State Party Convention.[10]

The true question, the court held, is "[w]hether the requirements of RCW 29.42.020 place a substantial burden on plaintiffs as they seek to achieve the stated purposes and

9. Order and Judgment at 2-3 (entered July 1, 1977) (App. C at 3).

> The First Amendment of the United States Constitution, as far as I am concerned, protects the right of political association as well as political expression. This statute purports to control the inner workings of a voluntary political association. It might be proper if there were a compelling state interest which was served by the statute, but I find that there is no such compelling state interest in any way as far as this statute is concerned. I do believe that people are entitled to voluntarily associate themselves and make their own rules as far as political parties or other types of association are concerned without state interference.

Oral opinion of the court, June 15, 1977 (App. B at 2-3).

10.

> There is no question but that RCW 29.42.020 mandates the size and composition of the State Democratic Committee. But the focus of the question of substantial burden, contrary to the position of plaintiffs, is not to the composition of the state committee and the ability of persons to be members of that committee.

90 Wn.2d at 310 (App. A at 13).

objectives of the Democratic Party." 90 Wn.2d at 310 (App. A at 13). The court then reviewed part of the party charter and concluded, without any explanation, that appellants' ability to achieve the "stated purposes and objectives of the Democratic Party" was not substantially burdened by RCW 29.42.020.[11]

The final part of the court's opinion is a reaffirmation of the supreme authority of the State Party Convention over party affairs and a ruling that the charter adopted by the Democratic State Convention is binding on the Democratic State Committee unless prohibited by valid state law. 90

11. 90 Wn.2d at 311 (App. A at 14). To show the "purposes and objectives" of the Democratic Party, the court quoted article II of the Party Charter, *supra* note 2, in full. *See* 90 Wn.2d at 310-11 (App. A at 13-14). The court referred to, but did not quote from, article VI of the Charter, which defines the party's "basic principles." In pertinent part that article provides:

Basic Principles

A. Open Party

. . . .

2. *All members of the Party shall enjoy equal rights, protection and opportunities* in all governing documents and *in all proceedings of the party at all levels.*

. . . .

C. Fair Representation

1. *In elections at all levels of the Party in which policy is determined or in which delegates, officers, other Party officials, and nominees for public office are to be selected, procedures shall:*

a. Provide full, equal, timely participation;

b. *Assure fair, proportional representation of preferences* . . . .

(emphasis added).

The court did not explain why the Democratic Party's commitment to administering the party organization on the basis of equal rights and proportional representation of all party members at all levels was not substantially burdened by RCW 29.42.020's prohibition of the Convention's attempt to provide for more equal representation of all party members on the State Committee.

The court did not even mention as a "purpose or objective" the Charter provision mandating a State Committee composed of two persons from each county *plus* one from each legislative district. Charter, *supra* note 2, art. IV(G) (4).

Wn.2d at 313 (App. A at 16). The court concludes that although the charter provisions mandating the composition of the State Committee would normally be binding on the State Committee, they are overridden by the prohibitions of RCW 29.42.020, which the court had found constitutional.

Four justices dissented, stating their opinion that RCW 29.42.020 does impose a substantial burden on appellants' associational rights and that appellees had failed to show any compelling state interest justifying that burden. *See* 90 Wn.2d at 314-15, 318-21 (App. A at 17-18, 21-24). There was no dissent from the majority's holding that the Democratic State Convention is the supreme party authority and that the party charter adopted by the convention is binding on the State Committee absent a valid statutory or constitutional command to the contrary.

THE QUESTION PRESENTED IS SUBSTANTIAL

The issue presented to the Washington Supreme Court was the constitutionality of a statute applied to prohibit a political party from implementing its decision as to the size and composition of its state central committee and barring individual party members from their seats on that committee.[12]

12. As noted in the Statement of the Case, *supra*, the 1976 Democratic State Convention duly enacted a charter provision adding 49 legislative district representatives to its State Committee. That action bound the State Committee to seat those representatives as full members. Four of appellants were duly elected by their legislative districts to sit on the State Committee. The State Committee refused to seat appellants and all other legislative district representatives on the grounds that RCW 29.42.020 prohibits the seating of more than two representatives per county. These actions squarely framed the question of whether state law could constitutionally be applied to override the Democratic Party's choice of internal organization and to bar appellants from participating in the State Committee's deliberations.

The Washington Supreme Court held that RCW 29.42.-020 does not substantially burden appellants' freedom of association. This decision is contrary to numerous decisions of this court and of lower federal courts holding that state regulation of internal party bodies substantially burdens the First Amendment rights of party members. The decision of the Washington Supreme Court presents a substantial federal question.

In *Cousins* v. *Wigoda*, 419 U.S. 477 (1975), this Court held that the right of political party members to participate in a national party convention according to the rules and decisions of the convention is an associational right protected by the First Amendment, and that a state's attempt to mandate the composition of the convention is a substantial burden on those rights:

> The National Democratic Party and its adherents enjoy a constitutionally protected right of political association. "There can no longer be any doubt that freedom to associate with others for the common advancement of political beliefs and ideas is a form of 'orderly group activity' protected by the First and Fourteenth Amendments . . . ."

419 U.S. at 487, *quoting Kusper* v. *Pontikes*, 414 U.S. 51, 56-67 (1973);

> The operation of the injunction issued by the Illinois Circuit Court in this case was as direct and severe an infringement of the right of association as can be conceived.

419 U.S. at 491-92 (Rehnquist, J., joined by Burger, C. J., and Stewart, J., concurring in the result).[13] *See generally Kusper* v. *Pontikes*, 414 U.S. 51 (1973); *Brotherhood of*

13. Specifically at issue in *Cousins* was a state injunction forbidding 59 persons from fulfilling their roles as party-approved delegates to the Democratic National Convention on the grounds that they had not been chosen in accordance with state law. The Court held this injunction to be a substantial burden on the First Amendment rights of the delegates and of all Democratic Party members. 419 U.S. at 489.

The Court in *Cousins* also reviewed a state injunction forbidding the Cousins delegates from participating in a post-convention caucus to select Illinois representatives to the Democratic National Committee. The Court stated that the question of the validity of this injunction was "analytically indistinguishable" from the question of the validity of the injunction barring petitioners from serving as delegates to the national convention, and held that the decision in *Cousins* applied to both injunctions. 419 U.S. at 481 n. 3.

The burden imposed on party members in *Cousins* is identical to the burden imposed on appellant party members here. *See also* note 15 *infra*.

Railroad Trainmen v. *Virginia State Bar*, 377 U.S. 1 (1964); *NAACP* v. *Button*, 371 U.S. 415 (1963); *Bates* v. *Little Rock*, 361 U.S. 516 (1960); *NAACP* v. *Alabama ex. rel. Patterson*, 357 U.S. 499 (1958); *Sweezy* v. *New Hampshire*, 354 U.S. 234 (1957).

In *Ripon Society* v. *National Republican Party*, 525 F.2d 567 (CADC 1975) (*en banc*), *cert. denied*, 424 U.S. 933 (1976), the court refused to enjoin the delegate selection formula of the National Republican Convention, stating that the Convention's choice of a formula was an internal party decision protected by the First Amendment.

> A party is after all more than a forum for all its adherents' views. It is an organized attempt to see the most important of those views put into practice through control of the levers of government. One party may think that the best way to do this is through a "strictly democratic" majoritariansm. But another may think that it can only be done (let us say) by giving the proven party professional a greater voice than the newcomer. Which of these approaches is the more efficacious we cannot say . . . .
>
> What is important for our purposes is that a party's choice, as among various ways of governing itself, of the one which seems best calculated to strengthen the party and advance its interests, deserves the *protection* of the Constitution . . . . The express constitutional

> rights of speech and assembly are of slight value indeed if they do not carry with them a concomitant right of political association. Speeches and assemblies are after all not ends in themselves but means to effect change through the political process. If that is so, there must be a right not only to form political associations but to organize and direct them in the way that will make them most effective.

525 F.2d at 585 (opinion for the court of McGowan, J.) (emphasis in the original).

Fahey v. *Darigan*, 405 F. Supp. 1386 (D.R.I. 1975), which held unconstitutional a Rhode Island statute mandating the size of political party ward committees, involved facts substantially identical to those present here. For many years the Democratic Party had fixed at 11 the size of Democratic ward committees in the City of Providence. In 1975 the Rhode Island legislature enacted legislation requiring these committees to be composed of 19 persons. Two Democratic Party members challenged the statute on the ground that the legislation unconstitutionally burdened their First Amendment right to conduct internal party affairs without unjustified state interference. 405 F. Supp. at 1394-96. The *Fahey* plaintiffs alleged no burden on their rights except that flowing from the inherent interference with party affairs caused by a statutorily mandated committee size. The court stated, nevertheless, that:

> We should not lightly dimiss, as *de minimis*, a party's choice of organizational structure even though the state interference at issue involves a mechanically applied, numerical or formal requirement.

405 F. Supp. at 1397. After reviewing *Ripon Society, Inc.* v. *National Republican Party, supra*, the court concluded:

> [T]he state intrusion at issue, which governs internal political party structure and not access to the state ballot, *imposes a substantial burden upon plaintiffs' associational rights* and is therefore subject to strict judicial scrutiny.

Id. at 1398 (emphasis added). Finding no compelling state interest to support the statute, the court declared it unconstitutional. *Id.*

The cases cited above establish that state interference with the decisions of a political party regarding the size and composition of internal party bodies substantially burdens the First Amendment rights of party members. RCW 29.42.020, by prohibiting the Washington Democratic Party from implementing its decision regarding the size and composition of its State Committee, totally negates the "party's choice, as among various ways of governing itself, of the one which seems best calculated to strengthen the party and advance its interests . . . ." *Ripon Society, supra*, 525 F.2d at 585. The Washington court clearly acted contrary to establish precedent in holding that this interference with the internal affairs of the Washington Democratic Party did not impose a substantial burden on the associational rights of all appellants as party members.

The cases cited above also establish that individuals have First Amendment rights to participate in party affairs and that a statute barring or even discouraging such participation substantially burdens the individual's rights of freedom of association. RCW 29.42.020 operates to forbid several appellants from exercising their party-sanctioned right to participate in the decisions of the Democratic State Committee.

In *Cousins* v. *Wigoda, supra*, this Court ruled that such denial is a substantial burden on each individual's freedom of association. The *Cousins* petitioners were fifty-nine persons who had been elected under Democratic Party rules

to be delegates to the Democratic National Convention. They challenged a state injunction forbidding them from participating in the national convention and from participating in a post-convention caucus to elect representatives to the national committee. *See* 419 U.S. at 480, 481 n.3. This Court held that these injunctions burdened the individual First Amendment rights of those elected to be delegates. *See* 419 U.S. at 482, 489.[14] The burden on the individual delegates in *Cousins* is identical to the burden on the appellants here who have been denied their positions on the Democratic State Committe.[15]

In *NAACP* v. *Alabama ex rel. Patterson*, 357 U.S. 449 (1958), the NAACP asserted both its rights and the individual rights of its members in challenging a statute requiring disclosure of the members' names. This Court considered only the rights of the members, *see* 357 U.S. at 458-59, and held that the likelihood that disclosure would induce individuals to withdraw their participation or to forego becoming members constituted a "substantial re-

14. *Accord, Kusper* v. *Pontikes*, 414 U.S. 51, 58 (1973) (state restrictions on voting in party primaries "substantially abridged" individual party member's right to associate with party).

15. The holding of *Cousins* on "substantial burden" cannot be distinguished on the grounds that *Cousins* involved state regulation of a national party body rather than the state regulation of a state political party present here. The test of whether a state imposes a "substantial burden" on the associational rights of an individual is the same whether that individual seeks to associate in a neighborhood civil rights group or party caucus or in a national convention. *Compare Kusper* v. *Pontikes*, 414 U.S. 51, 57-58 (1973) (treating equally burden on local, state and national party association) *and Bates* v. *Little Rock*, 361 U.S. 516, 523-24 (1960) (burden on membership in local branch of NAACP), *and NAACP* v. *Alabama*, 357 U.S. 449, 462-63 (1958) (burden on state NAACP membership) *with Cousins* v. *Wigoda*, 419 U.S. 447, 458-59 (1975) (burden on participation in party caucus and national party convention).

The fact that a state statute regulates national, as opposed to state, parties is relevant *only* to the question whether a compelling state interest exists to justify such regulation. *See generally* L. Tribe, *American Constitutional Law* 787 (1978).

straint" on the rights of those individuals to associate freely. 357 U.S. at 462-63; *accord, Bates* v. *Little Rock*, 361 U.S. 516, 523-24 (1960) (disclosure of membership lists likely to work "significant interference" with members' freedom of association).

Instead of a likelihood of substantial interference, there is certainty of total infringement here. The challenged statute totally bars four individual appellants from participating in the Democratic State Committee positions to which they were duly elected under the Party's mandate. The Washington court clearly acted contrary to *Cousins* v. *Wigoda*, *NAACP* v. *Alabama*, and *Bates* v. *Little Rock* in holding this effect is not a substantial burden on the First Amendment rights of these appellants.[16]

16. Although the majority below did not even inquire whether RCW 29.42.020 is justified by any compelling state interest, the trial court held that there is no compelling state interest justifying the burden imposed by RCW 29.42.020. Oral Opinion of Judge Horswill (App. B at 2-3). The four dissenting justices in the Washington Supreme Court agreed. 90 Wn.2d at 321 App. A at 24).

Appellees have identified only two state interests that allegedly justify RCW 29.42.020. The first is "Washington's interest in the stability of its political process." Brief of Appellants (appellees here) at 41 (Wash. Sup. Ct., filed Sept. 16, 1977). Even assuming, contrary to all precedent, that this interest justifies state interference with internal party affairs, stability does not require a mandatory two, and only two, representatives per county. Stability of the party organization is as well served by a simple requirement that the party maintain a state committee, or even by a requirement that there be a state committee with at least two persons from each county. Either requirement would serve the interest of stability without imposing the substantial burden presently placed on appellants' right to freedom of association. *See Kusper* v. *Pontikes*, *supra* at 58-61 (less restrictive means must be used to minimize burden on effective association with political party).

The second asserted state interest is "ensuring that all areas of the state are represented in its political processes." Brief of Appellants, *supra*, at 43. This state interest has been held insufficient in an area in which the state unquestionably has a greater interest, namely, ballot access. *See, e.g., Moore* v. *Ogilvie*, 394 U.S. 814 (1969). This interest does not become more compelling when applied to regulate party activities unrelated to ballot access. Moreover, this interest would be met by the less restrictive requirement that the state committee contain *at least* two representatives from each county. RCW 29.42.020's prohibition against more than that number unnecessarily burdens appellants' rights. *See Kusper* v. *Pontikes*, *supra*.

Freedom of association has consistently been asserted by political parties and their members to preserve their ability to organize internal party structures in a manner calculated to best advance party interests.[17] The Washington Supreme Court's decision that absolute state control of a political party's governing structure imposes no substantial burden on freedom of association makes political party independence only a matter of theory.

CONCLUSION

The members of the Democratic Party of Washington have decided that effective party organization and fair representation of all party members requires that the Democratic State Committee be composed of two representatives from each county plus one representative from each legislative district, and they have adopted a party charter so mandating. The addition of legislative district representatives to the State Committee equalizes the voting power of party members in different geographic areas and allows party groups, unable to command a county-wide majority, to make their views known through legislative district representatives. The court below, however, held that RCW 29.42.020 prohibits the Party from carrying out the mandate of the party charter and that this prohibition is constitutional because it imposes no "substantial burden" on appellants' First Amendment rights.

The Washington Democratic State Committee is a vital part of the Washington State Democratic Party. It is the governing statewide party body between conventions. It interprets party policy, administers party organization, and

17. *See Cousins* v. *Wigoda, supra; Ripon Society* v. *National Republican Party, supra; Fahey* v. *Darigan, supra; see also Redfearn* v. *Delaware Republican State Comm.*, 502 F.2d 1123, 1127-28 (CA3 1974), *on remand*, 393 F. Supp. 372 (1975), *aff'd*, 524 F.2d 1403 (1975), *cert. granted*, 426 U.S. 919 (1976), *vacated in light of intervening legislation*, 429 U.S. 809 (1976); *Lynch* v. *Torquato*, 343 F.2d 370, 372-73 (CA3 1965); *Hunt* v. *Democratic Party of Oklahoma*, 439 F. Supp. 788, 791-96 (N.D. Okla. 1977).

decides whether to support or contribute funds to candidates and causes. It elects the Democratic State Chairman who is the official Washington State Democratic Party spokesman.

The only means members of the Washington State Democratic Party have of controlling the day-to-day decisions of the State Committee is through control of the composition of that committee. Yet as a result of the holding below, the decisions of the State Committee are made by a membership established in direct conflict with the Party's charter. Indeed, the composition required by RCW 29.42.020, contrary to the Party's express mandate, gives 23 percent of the population control over 77 percent of the votes on the State Committee.

The effect of RCW 29.42.020, in barring appellants from implementing the Party's decision regarding the composition of the State Committee and prohibiting several appellants from serving in their party-authorized roles as participants in the decisions of that committee, imposes a substantial burden on appellants' First Amendment rights. The contrary holding of the court below presents a substantial federal question.

The decision of the court below is clearly contrary to established decisions of this Court. Probable jurisdiction should be noted and the judgment of the Supreme Court of Washington summarily reversed.

Respectfully submitted,

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October 1978

[No. 45014. En Banc. July 20, 1978.]

KAREN MARCHIORO, ET AL, *Respondents*, v. NEALE V. CHANEY, ET AL, *Appellants*.

[1] **Action — Joinder — Necessity.** Joinder of other parties is not required, and a court does not lose jurisdiction for failure thereof, when the relief sought, if granted, would not prejudice any interest of a third party.

[2] **Action — Standing — Political Parties — Participants.** Persons who regularly participate in political party activities have a personal interest sufficient to challenge the constitutionality of party representatives' selection procedures.

[3] **Constitutional Law — Sex Discrimination — ERA Test.** Under Const. art. 31, § 1, the State equal rights amendment, the use of a classification based on sex is permitted only when such classification does not permit discrimination on account of sex. If equality is restricted or denied on the basis of sex, the classification is discriminatory.

[4] **Elections — Political Parties — State and County Committees — Sex Discrimination — Equal Representation.** The provisions of RCW 29.42.020 and .030, which require that each major political party state committee must be composed of equal numbers of men and women and that both state and county major political party committees must be led by chairmen and vice-chairmen of opposite sexes, dictate absolute sexual equality in the composition and control of such political party structures and are not offensive to the requirements of Const. art. 31, § 1, the equal rights amendment.

[5] **Elections — Political Parties — State and County Committees — Sex Discrimination — Equal Responsibilities.** Both sexes are equally responsible for the conduct of the major political

parties' state committees under the provisions of RCW 29.42.020 and .030 and Const. art. 31, § 1.

[6] **Constitutional Law — Freedom of Association — Political Parties — Participants — Burden of Proof.** A party asserting a violation of his constitutionally protected right to associate for political purposes must prove that his rights have been substantially burdened by the complained of restriction or conduct.

[7] **Elections — Political Parties — State and County Committees — Freedom of Association — Equal Representation.** The requirements of RCW 29.42.020 that both sexes be equally represented on major political party state committees do not impose a substantial burden on the freedom of party members to associate in achieving the purposes and objectives of their party as reflected in its charter.

[8] **Elections — Political Parties — Statewide Structure — Authority.** A state convention of a political party is the ultimate repository of statewide party authority with the intrinsic power to determine the number, manner of selection, and the qualifications of its members. State conventions can establish the permanent state organization of the party, delegate authority, and promulgate and enforce intraparty statewide rules and regulations.

HOROWITZ and STAFFORD, JJ., WRIGHT, C.J., and UTTER, J., dissent by separate opinions.

Nature of Action: Several Democratic Party state central committee members and several members of the state Democratic Party sought relief from the sex equality provisions and freedom of association restrictions of RCW 29.42.020 and .030 and for enforcement of the 1976 state party charter central committee representation requirements.

Superior Court: The Superior Court for King County, No. 826358, Erle W. Horswill, J., on July 1, 1977, entered a judgment granting the relief sought from the statutory requirements but refusing to enforce the charter requirements.

Supreme Court: Holding that the requirements of equal sex representation in major political party state committees was not violative of either equal rights or freedom

of association for party participants and that the ultimate authority for political parties was the party state convention, the court *reverses* the judgment with respect to the statutory requirements and generally *affirms* the judgment with respect to the charter requirements.

Daniel Brink and *Winship A. Todd, Jr.* (of *Trethewey & Brink*), for appellants.

Wickwire, Lewis, Goldmark, Dystel & Schorr, by *Charles A. Goldmark*, for respondents.

DOLLIVER, J.—This is an action for declaratory and injunctive relief brought by plaintiffs who are active in the affairs of the Democratic Party in the State of Washington. Included are the chairwoman of the King County Democratic Central Committee, the chairmen of the Pierce County and Spokane County Democratic Central Committees, and several members of the Democratic Party of the State of Washington. Defendants are the incumbent chairman and the members of the Washington State Democratic Committee, established in conformity with RCW 29.42.020.

The bases of plaintiffs' action are that (1) RCW 29.42-.020 and .030, which provide the two members of the State Democratic Committee elected by the county central committees be of the opposite sex and the chairman and vice-chairman of the State Democratic Committee be of the opposite sex, violate Const. art. 31, the equal rights amendment (ERA); (2) RCW 29.42.020, by regulating the size and composition of the State Democratic Committee, violates the right of freedom of association found in the first amendment to the United States Constitution and Const. art. 1, § 4, the right to assemble; and (3) the "Charter of the Democratic Party of Washington" adopted by the Washington State Democratic Convention in Olympia on June 12, 1976, which, *inter alia*, in article 4(G)4 provided for the composition of the state committee, is binding on the State Democratic Committee. Article 4(G)4 specifically provides:

> The State Democratic Committee membership shall be organized according to state law: however, in addition to having two (2) delegates per county as voting members, each legislative district shall elect one voting member. Each district representative shall be allowed to vote on all matters or issues, policies and goals which would reasonably fall within the function of the state convention and as allowed by state law. Legislative district representatives shall be elected by the Legislative district organization at their organization meeting, or by the county chairpersons and the state committee persons of the counties within the district with their votes being weighted on the same basis as the last previous state convention in those districts with more than one county.

The trial court granted summary judgment for plaintiffs on each of these claims. We reverse on issues (1) and (2) and partly affirm and partly reverse on issue (3).

The state committee referred to in RCW 29.42.020 and .030 was created by laws enacted in 1909. Laws of 1909, ch. 82, § 6, p. 175. At that time, the state committee was composed of one member elected by the county committee from each county. In 1927, the composition from each county to the state committee was changed to one committeeman and one committeewoman. Laws of 1927, ch. 200, § 1, p. 287. In 1939, the requirement was enacted which provided for officers of the state and county committees and the further mandate that they must include a chairman and vice-chairman who shall be of the opposite sex. Laws of 1939, ch. 48, § 1, p. 153. Regulation by statute of political parties in this state has been in effect since 1907. Laws of 1907, ch. 209, p. 457. State committees, whose size and composition were mandated by statute, have been in effect since 1909; equal representation by sex of the governing body of the state committee has been required since 1927; and a state committee chairman and vice-chairman of the opposite sex have been required since 1939.

Before proceeding to the substantive issues, there is a procedural matter to be considered. Defendants argue the trial court did not have jurisdiction because of plaintiffs'

failure to join the State Republican Committee in this action. Defendants point to RCW 7.24.110 which requires joinder of "all persons . . . who have or claim any interest which would be affected" in an action for declaratory relief and to CR 19 which requires the joinder of indispensable parties. It is alleged the State Republican Committee, also constituted by RCW 29.42.020, has an interest which will be affected should that statute or portions of it be held unconstitutional: *i.e.*, defendants allege if the statute is held unconstitutional, all state committees established under it, since they have no other statutory authority, will cease to exist.

[1] We have held joinder is required only when the interest of the other persons might be adversely affected by the proceedings. *Williams v. Poulsbo Rural Tel. Ass'n*, 87 Wn.2d 636, 643, 555 P.2d 1173 (1976). Also, CR 19(a)(2)(A) requires joinder when a person claims an interest and the proceedings may "as a practical matter impair or impede his ability to protect that interest". Thus, the question is whether an interest of the State Republican Committee may be prejudiced by the proceedings.

RCW 29.42.020 establishes state committees as integral parts of the party organization. *King County Republican Cent. Comm. v. Republican State Comm.*, 79 Wn.2d 202, 211, 484 P.2d 387 (1971). It also enumerates certain powers of the state committee and provides for a meeting in January of each odd-numbered year. Even if a portion of a statute is void, the entire statute need not be struck down unless the invalid portion is unseverable. *See State ex rel. Distilled Spirits Inst., Inc. v. Kinnear*, 80 Wn.2d 175, 176, 492 P.2d 1012 (1972).

Here, as pointed out by plaintiffs, the relief sought would serve only to lift restrictions on the party's power to constitute its state committee; it would not eliminate the committee. Thus, although the requirement that committee members be of a certain sex or be chosen pursuant to a certain formula may be void, the statutory establishment

and enumeration of powers would remain, and the committee would not cease to exist or be hindered in any way. The real interest of the State Republican Committee is to exercise the powers enumerated in RCW 29.42.020. The continued exercise of these powers is not threatened by this action. We hold no interest is prejudiced, and we hold the trial court had jurisdiction.

I

The Equal Rights Amendment

Prior to reaching the ERA issue, we must address defendants' argument that plaintiffs have made no showing of actual or imminent injury to themselves and thus have no standing. Defendants further contend this is not an exceptional case of broad public import allowing the court to decide an otherwise nonjusticiable issue within the rule of *Huntamer v. Coe*, 40 Wn.2d 767, 246 P.2d 489 (1952). *State ex rel. Distilled Spirits Inst., Inc. v. Kinnear, supra*, citing *Huntamer*, held a question of public interest which has been adequately briefed and argued may be decided by the court in an advisory opinion if to do so would be beneficial to the public and to government officers. Because we hold plaintiffs have standing, we need not reach the question of whether this is such an exceptional case of broad public import as to overcome lack of standing.

[2] A person has standing to raise constitutional questions when his interest is a "'personal stake in the outcome of the controversy.'" *DeFunis v. Odegaard*, 82 Wn.2d 11, 24, 507 P.2d 1169 (1973). In *Maxey v. Washington Democratic Comm.*, 319 F. Supp. 673, 677 (W.D. Wash. 1970), the court held state party officers and members who participate regularly in the selection of their representatives (in that case to state and national conventions) "have a deep personal stake in the outcome" of a challenge to the constitutionality of selection procedures.

Plaintiffs here identify two interests which give them a "stake in the outcome" of this issue: First they assert that,

if the party is allowed to supplement the number of members on the state committee with legislative district representatives, the 50–50 sex division may be applicable to newly created committee seats, thus threatening at least two of the plaintiffs with exclusion on the basis of their sex. The second interest asserted is that of electing party officials by voting one's conscience free from statutory sex criteria.

We hold plaintiffs have a sufficient interest to give them standing and that all the elements of a justiciable controversy under the Uniform Declaratory Judgments Act (RCW 7.24) are present, pursuant to the interpretation of that statute in *State ex rel. O'Connell v. Dubuque*, 68 Wn.2d 553, 558, 413 P.2d 972 (1966).

While we agree with plaintiffs on the question of standing, we disagree with their views that RCW 29.42.020 and .030 violate the equal rights amendment. Const. art. 31, § 1, approved in 1972, reads as follows:

> Equality of rights and responsibility under the law shall not be denied or abridged on account of sex.

[3] In memoranda to the trial court and briefs to this court, plaintiffs assert the equal rights amendment forbids any classification based on sex. They cite *Darrin v. Gould*, 85 Wn.2d 859, 540 P.2d 882 (1975), in support of this view. This is not, however, what *Darrin* said. The determination that classification by sex is suspect, which is the key to the analysis used under equal protection (*Hanson v. Hutt*, 83 Wn.2d 195, 517 P.2d 599 (1973)), has been replaced by the new demands of the equal rights amendment. As we said in *Darrin v. Gould*, *supra* at 871:

> Const. art. 31, provided the latest expression of the constitutional law of the state, dealing with sex discrimination, as adopted by the people themselves. Presumably the people in adopting Const. art. 31 intended to do more than repeat what was already contained in the otherwise governing constitutional provisions, federal and state, by which discrimination based on sex was permissible under the rational relationship and strict scrutiny tests. Any

> other view would mean the people intended to accomplish no change in the existing constitutional law governing sex discrimination, except possibly to make the validity of a classification based on sex come within the suspect class under Const. art. 1, § 12. *See* footnote 7, *supra*. Had such a limited purpose been intended, there would have been no necessity to resort to the broad, sweeping, mandatory language of the Equal Rights Amendment. *See* Comment, *Sex Discrimination in Interscholastic High School Athletics*, 25 Syracuse L. Rev. 535, 570–74 (1974).

Darrin makes clear that the old approach of sex as a suspect class, strict scrutiny and proof of compelling state interest enunciated in *Hanson v. Hutt*, *supra*, has been swept away by the equal rights amendment. *See* Brown, Emerson, Falk & Freedman, *The Equal Rights Amendment: A Constitutional Basis for Equal Rights for Women*, 80 Yale L.J. 871, 904 (1971).

Under the equal rights amendment, the equal protection/suspect classification test is replaced by the single criterion: Is the classification by sex discriminatory? or, in the language of the amendment, Has equality been denied or abridged on account of sex? In the language of *Darrin v. Gould* at page 877, "under our ERA *discrimination* on account of sex is forbidden." (Italics ours.) *See Singer v. Hara*, 11 Wn. App. 247, 257, 522 P.2d 1187 (1974).

The thrust of the equal rights amendment (*see, e.g.*, 80 Yale L.J. 871 (1971), *supra;* Comment, *Equal Rights Provisions: The Experience Under State Constitutions*, 65 Cal. L. Rev. 1086 (1977)), is to end special treatment for or discrimination against either sex. As stated in California Comm'n on the Status of Women, *Impact ERA: Limitations and Possibilities* (1976) at page 8: "[P]ower need not imply hierarchy; power can be shared, and ERA advocates desire female equality not superiority." *See also* Official Voters Pamphlet, November 7, 1972, House Joint Resolution 61, at 52–53, especially "Statement for" at page 52.

The Yale Law Journal analysis, contrary to the views of plaintiffs, does not forbid the type of legislation found in

RCW 29.42.020 and .030. As the article states, at page 904, "This does not mean, however, that the government would be powerless to take measures designed to assure women actual as well as theoretical equality of rights." This is precisely the purpose of this legislation.

[4] What are the rights involved here? They are (1) the right to run for a position on the state committee of a major political party and to run for the position of chairman or vice-chairman of the state committee; and (2) the right as a member of the state committee or as one of the two statutory officers of the state committee to play a role in the leadership of a major political party. What has been done to assure women actual as well as theoretical equality of these rights? The legislature has found that in the conduct of the offices of state committees there shall be an absolute equality of rights between the sexes. An equal number of both sexes must be elected to the committee and as chairman and vice-chairman of the state committee. Neither sex may predominate. Neither may discriminate or be discriminated against. There is an equality of numbers and an equality of rights to be in office and to control the affairs of the state committee. The ironic result of plaintiffs' theory would be to abolish a statute which mandates equality by invoking a provision of the constitution passed to guarantee equality.

The major objection of plaintiffs seems to be the mandate by statute that one of the positions on the state committee from each county is reserved for a female and the other for a male and that this violates the equal rights amendment. But if the statute simply said, "The state committee of each major political party shall be composed of an equal number of women and men" there clearly would be no abridgment or denial on account of sex of any equality of rights under the law. We have found no case or any literature which suggests mandated equality by statute would violate the equal rights amendment.

If equality under the statute is not offensive to the equal rights amendment, then certainly, as here, the state may

adopt a rational means—one male and one female state committee member from each county—to achieve the equality required.

As commentators have consistently stated (*see* 80 Yale L.J. 871, 920 *et seq.*), the equal rights amendment does not permit special exemptions or exceptions because of sex, *e.g.*, "protective" labor legislation applicable to women only. These laws generally provided special benefits, excluded women from particular occupations or from employment under certain conditions, or restricted conditions of employment. They are exclusionary statutes which apply to one sex only and are in no way comparable to the statutory scheme considered here. *See Hanson v. Hutt, supra; see also* Official Voters Pamphlet, November 7, 1972, *supra.*

The marital community and the community property statutes in this state are in some ways analogous to the situation in this case. The "governing parties" in a marriage must be male and female—one of each. RCW 26.04; *Singer v. Hara, supra.* The persons in the marital community are vested with equal power to manage the affairs of the community and its property. RCW 26.16.030. Thus, while there is certainly a classification, there is equality of treatment and this is sufficient to meet the requirements of the equal rights amendment. *Singer v. Hara, supra.*

There is another aspect of Const. art. 31 which is not mentioned by either party, is not referred to in any case involving the equal rights amendment, and is not the subject of any article or comment. There are 16 states which have some kind of equal rights provisions in their constitutions. *See* 65 Cal. L. Rev. 1086 at 1111–12 (1977), *supra.* In only one does the word "responsibility" appear—the Constitution of the State of Washington.

The legislative history is scanty. The phrase "and responsibility" was placed in the proposed equal rights amendment by the House committee and was approved apparently without question by the legislature and by the people. Although no reference to the phrase "and responsibility" is made anywhere, we must presume the legislature

and the people did not intend the phrase to be mere surplusage but that it was to have meaning. *Chlopeck Fish Co. v. Seattle*, 64 Wash. 315, 117 P. 232 (1911).

[5] The most obvious and we belive correct meaning is on the face of the amendment: "Equality of . . . responsibility under the law shall not be denied or abridged on account of sex." The "Equality of . . . responsibility under the law" involved here is for each sex equally to conduct the affairs of major political parties through the statutory instrumentalities required by RCW 29.42.020 and .030—the state committees. This is an equal responsibility mandated by law and which, under the equal rights amendment, "shall not be denied or abridged on account of sex." When the state, by statute, mandates an equality of responsibility, it is hardly appropriate for this court to hold this statutory mandate to be stricken by the very constitutional provisions which approve it. Neither RCW 29.42.020 nor RCW 29.42.030 violate Const. art. 31, the equal rights amendment.

II

Right of Association

Plaintiffs cite the first amendment to the United States Constitution and Const. art. 1, § 4 and assert RCW 29.42-.020, which specifies the size and geographical composition of the State Democratic Committee, unconstitutionally violates their right to freedom of association.

Freedom of association is a distinct right under the federal constitution and was first discussed in *NAACP v. Alabama*, 357 U.S. 449, 2 L. Ed. 2d 1488, 78 S. Ct. 1163 (1958) (per Harlan, J.). A number of recent cases dealing with the affairs of political parties and which refer to political associational rights are brought to our attention by plaintiffs: *Buckley v. Valeo*, 424 U.S. 1, 46 L. Ed. 2d 659, 96 S. Ct. 612 (1976); *Cousins v. Wigoda*, 419 U.S. 477, 42 L. Ed. 2d 595, 95 S. Ct. 541 (1975); *Kusper v. Pontikes*, 414 U.S. 51, 38 L. Ed. 2d 260, 94 S. Ct. 303 (1973); *Ripon Soc'y, Inc. v. National Republican Party*, 525 F.2d 567 (D.C. Cir. 1975), *cert. denied*, 424 U.S. 933, 47 L. Ed. 2d 341, 96 S. Ct. 1147 (1976); *Fahey v. Darigan*, 405 F. Supp. 1386 (D.R.I. 1975).

[6, 7] In *Storer v. Brown*, 415 U.S. 724, 729, 39 L. Ed. 2d 714, 94 S. Ct. 1274 (1974), the court stated, "substantial burdens on the right to vote or to associate for political purposes are constitutionally suspect and invalid under the First and Fourteenth Amendments and under the Equal Protection Clause unless essential to serve a compelling state interest." While the defendants have the burden to show a compelling state interest, proof of a substantial burden on the right to associate for political purposes is a prerequisite to finding a violation of plaintiffs' associational rights. This burden of proof is on the plaintiffs. *American Party v. White*, 415 U.S. 767, 790, 39 L. Ed. 2d 744, 94 S. Ct. 1296 (1974); *Fahey v. Darigan, supra*. Thus, we must first inquire as to whether plaintiffs have shown a substantial burden on their association for political purposes.

Plaintiffs cite *Cousins v. Wigoda, supra; Ripon Soc'y, Inc. v. National Republican Party, supra;* and *Fahey v. Darigan, supra*, as authority for their assertion that the regulation of the size and composition of the State Democratic Committee is a substantial burden on them as members of the Democratic Party. However, neither *Cousins* nor *Ripon* deals directly with this point. They are concerned with the electoral process. Only *Fahey v. Darigan, supra*, of all the cases examined by us or brought to our attention by plaintiffs directly concerns the membership of political party governing bodies. No case of the United States Supreme Court has extended the right of association in political affairs to areas outside of racial discrimination or participation in the electoral process. Furthermore, there seems to be little inclination to expand the doctrine to other aspects of the political process. As *Storer v. Brown, supra* at 730 states, "It is very unlikely that all or even a large portion of the state election laws would fail to pass muster under our cases". We believe *Fahey v. Darigan, supra*, to be an aberration from the rules and principles

announced by the United States Supreme Court and find it not controlling in this case. Furthermore, in *Fahey*, one faction of the Democratic Party used its political muscle in the Rhode Island legislature to overturn, for its own advantage, long-standing intraparty organizational arrangements. Here the statute complained of has been in effect since 1927—over 50 years—and the statute containing the principle complained of has been in effect since 1909—nearly 70 years.

More importantly, however, we must consider whether the associational rights of members of the Democratic Party have in fact been substantially burdened by RCW 29.42.020. There is no question but that RCW 29.42.020 mandates the size and composition of the State Democratic Committee. But the focus of the question of substantial burden, contrary to the position of plaintiffs, is not to the composition of the state committee and the ability of persons to be members of that committee. This is too narrow a view. Rather, it is to whether the requirements of RCW 29.42.020 place a substantial burden on plaintiffs as they seek to achieve the stated purposes and objectives of the Democratic Party.

At this point, it is useful to give an account of some of the activities of the 1976 State Democratic Convention. At this convention, held in Olympia on June 12, 1976, a "Charter of the Democratic Party of Washington" was adopted by the delegates. Included in this charter were articles dealing with purpose and objectives, membership, organizations or officials authorized to function continuously, convening of party organizations, basic principles and specific party practices.

The purpose and objectives of the Democratic Party as listed by the charter are:

1. Adopt and promote statements of policy to serve as standards for Democratic elected officials and goals for the people of the state.

2. Nominate and assist in the election of Democratic candidates at all levels who support the goals of the party.
3. Administer the party organization in accordance with rules and standards which will facilitate achieving the goals of the party.
4. Establish standards and rules of procedure to afford all members of the Democratic Party full, timely and equal opportunities to participate in decisions concerning the selection of candidates, the formulation of policy, and the conduct of other party affairs without discrimination on the basis of sex, race, age (except where state and federal law precludes participation), religion, economic status or ethnic origin.
5. Promote fair campaign practices and fair adjudication of disputes.
6. Raise and disburse monies needed for the continuing operation of the Party.
7. Work with elected Democratic public officials at all levels to achieve the goals of the Democratic Party.
8. Encourage and support codes of political ethics governing all public officials in the conduct of their offices.
9. Encourage voter registration and voting.

Charter of the Democratic Party of Washington, art. 2, Purposes and Objectives (June 12, 1976).

The associational rights of plaintiffs as members of the Democratic Party of Washington are those which flow from the declared purposes and objectives of the party articulated on June 12, 1976, and contained in article 2 of the charter. Plaintiffs have failed to indicate in any way how these purposes and objectives will be in the least burdened by RCW 29.42.020. In article 6 of the charter, the "Basic Principles" of the Democratic Party of Washington are listed. They are: Open Party; Full Participation; Fair Representation; Majority Rule; and Accountability. The definition of these terms is also contained in article 6. The furtherance of these basic principles presumably is a goal of the party. However, there is no principle the fulfillment by plaintiffs of which is on its face—or by argument of plaintiffs—substantially burdened by RCW 29.42.020.

Finally, it should be noted that there is no associational burden of any kind, other than the required voter registration, on the right and ability of any Democrat to vote indirectly (by voting for Democratic precinct committee members in the general election) or directly (as a precinct committee member) for members of the state committee. Plaintiffs have failed to meet their burden of proof. We hold RCW 29.42.020 is not a substantial burden on plaintiffs' right of free association for political purposes.

This case is another in a series of cases going back nearly a decade relating to intraparty struggles within the two major political parties in this state. *Maxey v. Washington State Democratic Comm.*, 319 F. Supp. 673 (W.D. Wash. 1970); *Dahl v. Republican State Comm.*, 319 F. Supp. 682 (W.D. Wash. 1970); *King County Republican Cent. Comm. v. Republican State Comm.*, 79 Wn.2d 202, 484 P.2d 387 (1971). It involves neither matters of racial discrimination, nor the electoral process, nor the freedom of any Democrat to participate fully in the affairs of his or her party. While plaintiffs bring the case to us alleging constitutional deficiencies and assert it is part of the "national movement toward increased democratization of American political parties", it is in reality a factional dispute within the Democratic Party which, rather than being resolved through the usual and appropriate political processes, has been thrust into the judicial arena. While we do not deny the parties' right to a judicial determination of this dispute, we share the views expressed by the court in *Fahey v. Darigan, supra* at 1398 n.12, "[T]he party factions should have resolved their differences by intraparty politicking, as is ordinarily and properly the case."

III

Authority of the State Democratic Convention

The final matter to be determined is whether the trial court properly held, but for the exceptions noted in I and II above, that the charter, except for article 4(G)(4) is binding on the State Democratic Committee. According to affidavits

submitted to the trial court, the chairman of the State Democratic Committee, Neale V. Chaney, ruled at a meeting of the committee on January 29, 1977, that the state committee was not operating under the charter. A motion to adopt the charter without article 4(G)(4) was defeated at the April 16, 1977, meeting of the committee.

[8] Plaintiffs urge that our views expressed in *King County Republican Cent. Comm. v. Republican State Comm., supra* at 211–12, apply here. We agree. As stated in that case:

> [I]t is clear under general law that on a statewide basis the state convention of a major political party is the ultimate repository of statewide party authority. As is generally true with the deliberative bodies of voluntary associations, the state political party convention possesses the intrinsic power to determine the number, manner of selection, and the qualifications of its members. And, subject to the intervention of applicable statutory or constitutional provisions, the state convention is implicitly empowered to establish the permanent state organization of the party, create committees, delegate authority, and promulgate, adopt, ratify, amend, repeal or enforce intraparty statewide rules and regulations. 25 Am. Jur. 2d *Elections* §§ 120, 121 (1966); 29 C.J.S. *Elections* §§ 83, 84 (1965).

Here, the trial court in its order and judgment stated:

> That the State Convention of the Washington State Democratic Party is the ultimate repository of statewide party authority, that the Washington State Democratic Committee is subject to the overriding authority of State Convention, that the Charter of the Washington State Democratic Party was duly adopted by the Washington State Democratic Convention on June 12, 1976, that the Charter is binding on the State Democratic Committee.

The trial court specifically refused to order that "the State Democratic Committee must be operated in accordance with the Charter." We concur with the trial court's views. While under the authority of *King County Republican Cent. Comm. v. Republican State Comm., supra,* the state convention is the ultimate repository of statewide

party authority, it may well be that portions of the State Democratic Charter not before us for consideration violate state or federal statutes and constitutions. Thus, while the action of the state convention is binding on the State Democratic Committee except for article 4(G)(4), we do not at this time pass on the validity of the rest of the charter as it relates to the state and federal laws and constitutions.

The judgment of the trial court as to the applicability of Const. art. 31 to RCW 29.42.020 and .030 and the applicability of the right of association under the state and federal constitutions to RCW 29.42.020 is reversed. With the exception of article 4(G)(4), the judgment that the State Democratic Charter is binding on the Democratic State Committee is affirmed.

ROSELLINI, HAMILTON, BRACHTENBACH, and HICKS, JJ., concur.

HOROWITZ, J. (dissenting)—The majority opinion denies the State Democratic Party the right to control the size and composition of its own state committee, the body charged with governing the statewide operations of the party between conventions, through the means of a charter duly adopted by the party's own convention. First, the majority holds sex is to be a criterion for membership on the committee, despite the party members' expressed will that ability—not sex—be the relevant criterion, and despite the mandate of the people of Washington, expressed in their adoption of the equal rights amendment to our state constitution, that sex not be a criterion in creating classifications affecting rights and responsibilities.

Second, the majority holds that the party may not alter the composition of the committee to more fairly represent the Democrats of the three most populous counties of the state. King, Pierce, and Spokane Counties comprise approximately 52 percent of the state's total population,[1]

[1]Based on 1976 population figures. State of Washington, Office of Program Planning and Fiscal Management, *State of Washington Pocket Data Book.*

and approximately 53 percent of the total number of its registered voters.[2] Yet Democrats from these counties are represented by only 8 percent of the delegates to the state committee. Despite the clear and substantial burden this inequity places on the right of free association of Democratic Party members, and despite this court's recent decision in *King County Republican Cent. Comm. v. Republican State Comm.*, 79 Wn.2d 202, 484 P.2d 387 (1971) (hereinafter referred to as *King Cy. Rep. Comm.*) that the party convention controls party government, the majority stymies the effort of the state party, made at its convention, to remove the inequity by imposing a new formula and giving the three most populous counties 27 percent of the total number of delegates.

In reaching its result, the majority has seriously undermined the strength of the equal rights amendment and of the First Amendment freedom of association to promote political views. Furthermore, it has ignored our holding that the state convention is the "ultimate repository of statewide party authority," superior to the state committee. *King Cy. Rep. Comm., supra* at 211, 212. I cannot believe this result is legally sound.

I

THE EQUAL RIGHTS AMENDMENT

The equal rights amendment adopted by the people of the State of Washington in 1972 (Const. art. 31, § 1) absolutely forbids any classification of persons based on sex. *Darrin v. Gould*, 85 Wn.2d 859, 540 P.2d 882 (1975). The majority concedes the amendment's broad language is not to be construed under the judicial standards adopted by the United States Supreme Court for the equal protection clause of the Fourteenth Amendment, which permit classifications based on sex where the requirements of the rational relationship or strict scrutiny test have been met. Moreover, the majority correctly points out that the thrust

[2]Based on official returns of November 1978 general election.

of the equal rights amendment is to end discrimination against either sex. The majority wrongly concludes, however, that the equality of rights and responsibilities guaranteed by the amendment is the same as equality of numbers, an interpretation which is obviously at odds with both the language and the spirit of the amendment. Equality of the *right* to seek and hold party offices cannot be guaranteed when these offices are to be allocated on the basis of sex so as to achieve equality of *numbers*. Furthermore, the majority approves, and thereby perpetuates, the use of sex as a criterion for classification, the very evil sought to be eliminated by the amendment.

In *Darrin v. Gould, supra*, this court adopted a standard for application of the new constitutional amendment, namely, outright prohibition of classifications on the basis of sex, even where such a classification would have been permissible under the equal protection clause. *All* classifications based on sex are prohibited. The only exceptions, we pointed out, are where the function of the classification is to regulate cohabitation in sexual activity between unmarried persons, protect fundamental rights of privacy, or allow dissimilar treatment because of characteristics unique to one sex. *Darrin v. Gould, supra* at 872 n.8. The majority even quotes the rationale adopted for this far-reaching standard: that the equal rights amendment must have been intended to prohibit sex classifications allowable under other constitutional provisions. The majority fails to state the rule adopted in *Darrin v. Gould*, though, that is that a classification cannot be based on sex alone, with no relation to the individuals' ability to perform the activity regulated. In *Darrin* the activity regulated was participation in high school football, and we held that, under the facts of that case, a classification based on sex did not relate to the ability of the individual to play football. Here the activity regulated is representation of a constituency on the Democratic Party's county or state committees. It should be obvious that sex is completely unrelated to the

ability of an individual to perform these duties. This classification based on sex is also prohibited by the equal rights amendment.

The majority argues, however, that RCW 29.42.020 and .030, which require delegations to the state committee to consist of one man and one woman from each county, and that the chairman and vice-chairman of the state and county committees be of opposite sexes, breathe the *spirit* of equality and therefore conform to the requirements of the equal rights amendment. The error in this argument is easily demonstrated. The sex-related provisions of the statues have the effect that once a woman is chosen to represent her county on the state committee, or to be chairman or vice-chairman of one of the committees, no other woman is eligible for the remaining position, even though she may be the best qualified candidate and the person who would receive the most votes in a free election. A man must be chosen, even though that man may not possess the same qualities. All women desiring to seek and hold the remaining office are denied the right to do so *merely because of their sex*. Obviously, the same inequity applies to men seeking office under these statutes. Furthermore, contrary to the assertion of the majority, this inequity would exist, and be equally repulsive to the equal rights amendment, even if the statutory language required "an equal number of women and men." Clearly the majority opinion prevents the equal rights amendment from achieving its purpose of making sex a neutral factor, one to be disregarded in favor of ability and performance.

The majority argues that the use of the word "responsibility" in the amendment is ignored by this interpretation. On the contrary, the use of the word "responsibility" in the amendment emphasizes its aim that appropriate criteria, such as excellence in the activity regulated, be applied in creating necessary classifications, instead of the inappropriate criterion of sex. Talent is to be the guide, not sex.

I believe the equal rights amendment was intended to aid a political party, including the Democratic Party, in its

effort to set ability as the criterion for election of its officials, not to hamstring it. The majority's interpretation distorts the amendment's very purpose. The Democratic Party in convention assembled decided the welfare of the party would be best served by the use of criterion of ability, rather than sex, in choosing its officials. It is supported in its effort to employ that criterion by the language and spirit of the equal rights amendment. The majority's distortion of the amendment stymies the efforts of both the Democratic Party and the people of Washington to make sex a completely neutral factor in the creation of classifications affecting rights and responsibilities in this state.

II

Right of Association

The majority holds that respondents failed to show the statute determining the size and composition of the Democratic State Committee places a substantial burden on their freedom of association for political purposes under the First Amendment. This "factional dispute within the Democratic Party," it holds, should be resolved by "intraparty politicking." The majority appears to ignore rather than acknowledge the political reality facing the State Democratic Party, and to substitute its own judgment of what control over party structure is needed for that of the party convention, and of at least two federal courts.

The state committee as constituted by RCW 29.42.020 is grossly underrepresentative of the Democratic Party members living in the state's three most populous counties. Respondents point out in their brief, and appellants do not deny, that the vote of one Democrat in Garfield County has an influence in the state committee equal to the votes of nearly 400 Democrats in King County. The result is the party's principal organ for pursuing its political goals does not fairly represent the party's membership. Too great a voice is given to members from less populous areas; too small a voice is given to members from populous urban areas. Yet this committee has enormous control over the

functioning of the State Democratic Party, and the majority's opinion gives it the additional power to ignore the mandate of the party's own convention.

The party decided at its convention that the inequitable makeup of the state committee burdened its ability to pursue the party's political goals and adopted a charter which alters the formula for the composition of the state committee. The party took the very course recommended by the majority. Through "intraparty politicking" at the convention, it arrived at a formula for allocating responsibility for governing the party which it felt was democratic and fair. It now seeks to put that formula into effect, but is prevented from doing so by the statute here challenged.

Respondents claim this situation is a burden on their right of association, and they have federal precedent to support their claim. The majority errs when it labels *Fahey v. Darigan*, 405 F. Supp. 1386 (D.R.I. 1975) an "aberration." The reasoning of that case, which held that freedom of association of members of a political party prohibits state regulation of the size of internal party organs, is entirely consistent with the United States Supreme Court holding in *Cousins v. Wigoda*, 419 U.S. 477, 42 L. Ed. 2d 595, 95 S. Ct. 541 (1975). That case held that state interference with party rules governing qualification of delegates to a national convention unconstitutionally burdens party members' right of association. Although the court emphasized the crucial nature of the election for president and vice-president involved in *Cousins*, the notion that a political party must have control of its own processes was not limited in that case to national presidential elections. Furthermore, *Fahey v. Darigan* is not the only lower court case upon which respondents can rely. In *Ripon Soc'y, Inc. v. National Republican Party*, 525 F.2d 567 (D.C. Cir. 1975), *cert. denied*, 424 U.S. 933, 47 L. Ed. 2d 341, 96 S. Ct. 1147 (1976), the court stated a conclusion fairly drawn from Supreme Court precedents:

> What is important for our purposes is that a party's choice, as among various ways of governing itself, of the

> one which seems best calculated to strengthen the party and advance its interest, deserves the *protection* of the Constitution as much if not more than its condemnation. The express constitutional rights of speech and assembly are of slight value indeed if they do not carry with them a concomitant right of political association. Speeches and assemblies are after all not ends in themselves but means to effect change through the political process. If that is so, there must be a right not only to form political associations but to organize and direct them in the way that will make them most effective.

Ripon Soc'y, Inc. v. National Republican Party, supra at 585.

This court took note of the importance of party organization to freedom of speech in *King Cy. Rep. Comm., supra* at 219 and *State ex rel. Wells v. Dykeman*, 70 Wash. 599, 127 P. 218 (1912). With this wealth of sound precedent supporting respondents' claim that their freedom of association is substantially burdened by the statute they challenge, it is insupportable for the majority to characterize *Fahey v. Darigan* as an "aberration." That case is direct support for respondents' convincing argument that their freedom of association is burdened by the statute, which deprives them and other party members of the right to democratically organize their principal party organ as they see fit.

Furthermore, while the majority claims respondents have failed to indicate in any way how the purposes and objectives of the Democratic Party will be burdened by the statute, it ignores one of the very purposes and objectives it quotes from the charter:

> 3. Administer the party organization in accordance with rules and standards which will facilitate achieving the goals of the party.

Charter of the Democratic Party of Washington, art. 2, Purposes and Objectives (June 12, 1976). The charter could not be more explicit in stating a purpose to govern the

party in such a way as to most effectively pursue its political goals. The interference of the statute with this purpose is patently obvious.

Respondents having established this substantial burden on their First Amendment rights, it becomes appellants' burden to show a compelling state interest justifying the statute's interference in internal party organization. *Cousins v. Wigoda, supra.* Appellants must also show the State has chosen the least restrictive means to achieve its purpose. *See Kusper v. Pontikes*, 414 U.S. 51, 38 L. Ed. 2d 260, 94 S. Ct. 303 (1973). The appellants have failed to carry the burden and the statute should be found unconstitutional.

III

Authority of the State Democratic Convention

The majority reaffirms the holding of this court in *King Cy. Rep. Comm., supra*, that "the state convention of a major political party is the ultimate repository of statewide party authority." It holds the action of the state convention is binding on the state committee. Nonetheless, the majority holds the formula for adding delegates to the state committee provided in article 4(G)(4) of the charter is not binding on the committee. While the rationale of the majority is not explicit, it may be inferred that it bases its conclusion on the proviso to the statement made in the *King Cy.* case, that is, "*subject to the intervention of applicable statutory . . . provisions*, the state convention is implicitly empowered to establish the permanent state organization of the party". *King Cy. Rep. Comm., supra* at 211. (Italics mine.) This assumes, of course, that an applicable statute is valid.

The majority thus ignores the real issue created by the conflict between the charter formula and the statutory formula for the composition of the state committee. As a matter of statutory construction, does RCW 29.42.020 empower the state committee to disregard the mandate of the party convention to seat additional committee members elected pursuant to the charter? In *King Cy. Rep. Comm., supra,*

we said the state committee is subordinate to the overriding power of the convention. Our own precedent thus supports the action of the party convention in creating additional committee seats. In view of our holding in *King Cy. Rep. Comm.*, and of the expressed will of the party convention, RCW 29.42.020 is an unjustifiable interference with party control over its internal affairs. It violates the First Amendment right of association and is invalid. It must yield to the provisions of the party charter.

The party convention has expressed its choice for the composition of the state committee. Accordingly, for the reasons previously stated, the state committee is bound by its party's convention to seat the additional committee members.

I dissent.

WRIGHT, C.J., and UTTER, J., concur with HOROWITZ, J.

STAFFORD, J. (concurring in the dissent)—I concur in the dissent except insofar as it appears to elevate footnote 8 in *Darrin v. Gould*, 85 Wn.2d 859, 872, 540 P.2d 882 (1975) to the status of a *holding*. In the footnote we merely commented that "three *possible* exceptions" to the federal equal rights amendment were discussed in Brown, Emerson, Falk & Freedman, *The Equal Rights Amendment: A Constitutional Basis of Equal Rights for Women*, 80 Yale L.J. 871, 904 (1971). (Italics mine.) We did not hold that there were in fact three exceptions to the absolute ban of classifications based upon sex under the equal rights amendment (Const. art. 31, § 1). Further, none of the three *possible* exceptions applied in *Darrin v. Gould, supra*, and none apply here. Thus, we should follow the lead of *Darrin* and again refrain from deciding either whether such exceptions exist or whether they are absolutes, until the issue is properly before us.

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

KAREN MARCHIORO, ET AL.,

Respondents,

v.

NEALE V. CHANEY, ET AL.,

Appellants.

MANDATE

No. 45014

King County No. 826358

JUDGEMENT NUMBER 157122

The State of Washington to: The Superior Court of the State of Washington in and for King County

This is to certify that the opinion of the Supreme Court of the State of Washington filed on July 20, 19 78, became the decision terminating review of this court in the above entitled case on August 9, 19 78. This cause is mandated to the superior court from which the appeal was taken for further proceedings in accordance with the attached true copy of the opinion.

FILED
'78 AUG 14 AM 8:1
KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA.

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✓	TRANS

Pursuant to Rule of Appellate Procedure 14.3, costs are taxed as follows:
Costs in the sum of $184.42 will be taxed in favor of appellants and against respondents pursuant to Clerk's Ruling on Costs dated August 3, 1978.

cc: Trethewey & Brink
Mr. Winship Todd, Jr.
Wickwire, Lewis, Goldmark, Dystel & Schorr
Mr. Charles Goldmark
Honorable Kenneth Helm, Clerk
King County Superior Court
Reporter of Decisions

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Olympia, this 11th day of August, A. D. 19 78

SEAL OF THE SUPREME COURT, STATE OF WASHINGTON

REEL 860 FRAME 768

JOHN J. CHAMPAGNE
Clerk of the Supreme Court, State of Washington

SUP 007 (6-76)

60

P R O C E E D I N G S

Seattle, Washington
Wednesday, June 15, 1977
9:15 o'clock, A.M.

THE COURT: Is Mr. Brink going to be here?

MR. TODD: Mr. Brink is out of town, your Honor.

THE COURT: Fine. We are ready to proceed, I presume.

In this particular case, I have already held that RCW 29.42.020 is unconstitutional inasfar as it mandates that there be one man and one woman from each county, as I believe that that is contrary to equal rights for men and women. And I dare say that we are entitled to have two men or two women, either one.

I have also indicated that I believe that the state convention is the governing body, as far as political parties are concerned, and its findings and rulings are controling as far as the State Central Committee is concerned, which sits of course in the interim between conventions.

I thirdly am going to hold that RCW 20.42.020 is unconstitutional in that it mandates that the State

Committee for either party be made up of two representatives from each county. The First Amendment of the United States Constitution, as far as I am concerned, protects the right of political association as well as political expression. This statute purports to control the inner workings of a voluntary political association. It might be proper if there were a compelling state interest which was served by the statute, but I find that there is no such compelling state interest in any way as far as this statute is concerned. I do believe that people are entitled to voluntarily associate themselves and make their own rules as far as political parties or other types of association are concerned without state interference. This is a private matter protected by the First Amendment, and there is no valid, compelling state interest served by this statute which would exempt the legislation from the restrictions of the First Amendment to the United States Constitution, and with the like provisions of the State Constitution.

I trust that that takes care of the matter.

APPENDIX C

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

KAREN MARCHIORO, WILLIAM BAARSMA, RICHARD SCHROEDER, ROBERT FITHIAN, RUTH FISHER, DORIS EVANS, WILLIAM PIERCE, and KATHY REID,

Plaintiffs,

vs.

NEALE V. CHANEY, and THE WASHINGTON STATE DEMOCRATIC COMMITTEE,

Defendants.

No. 826358

ORDER AND JUDGMENT

This matter came on for hearing on June 3 and June 10, 1977, on the parties' cross-motions for summary judgment pursuant to CR 56 and the Court having considered plaintiffs' amended complaint, defendants' answer, the agreement of counsel dated June 10, 1976, stipulating that the amended complaint shall be deemed amended to request the relief granted herein with respect to RCW 29.42.030, all other matters of record, oral argument of counsel, and being in other respects fully advised, it is hereby

ORDERED, the Court finding that there is no genuine issue of material fact herein and that plaintiffs are entitled to judgment as a matter of law, that plaintiffs' motion for partial summary judgment be and hereby is granted on (1) the First Claim of Plaintiffs' Amended Complaint insofar as it asserts that the sex classifications of RCW 29.42.020 and .030 violate Amendment 61, Article XXXI, of the Washington State Constitution as applied to the Washington State Democratic Committee; (2) the First Claim of Plaintiffs' Amended Complaint insofar as it asserts that regulation of the size and composition of the Washington State Democratic Committee by RCW 29.42.020 violates the First Amendment of the United States Constitution and Article I, § 4, of the Washington State Constitution; and (3) on the Second Claim of Plaintiffs' Amended Complaint; and it is further

ORDERED, the Court finding that there is no just reason for delay, that final judgment as follows be entered upon the First and Second Claims of Plaintiffs' Amended Complaint; and therefore it is

ORDERED, ADJUDGED AND DECREED

1. That RCW 29.42.020 and RCW 29.42.030 insofar as they establish sex as a criterion for election to, or membership on, the Washington State Democratic Committee and insofar as RCW 29.42.020 requires the chairman and vice-chairman of the Washington State Democratic Committee to be of opposite sexes, violate the Equal Rights Amendment, Article XXXI, of the Washington State Constitution and are therefore void; and

2. That RCW 29.42.020 insofar as it specifies the size and composition of the Washington State Democratic Committee by requiring that said Committee be composed of one Committeeman and Committeewoman from each county unconstitutionally violates freedom of association protected by the First Amendment to the United States Constitution and by Article I, § 4, of the Washington State Constitution and is therefore void as applied to the Democratic Party of the State of Washington; and

3. That the State Convention of the Washington State Democratic Party is the ultimate repository of statewide party authority, that the Washington State

Democratic Committee is subject to the overriding authority of State Convention, that the Charter of the Washington State Democratic Party was duly adopted by the Washington State Democratic Convention on June 12, 1976, that the Charter is binding on the State Democratic Committee.

DONE IN OPEN COURT this ___ day of July, 1977.

//s// Erle Horswill

Presented by:

WICKWIRE, LEWIS, GOLDMARK,
DYSTEL & SCHORR

By //s// David C. Crosby
David C. Crosby
Attorneys for Plaintiffs

Copy received and present at presentation:

TRETHEWEY & BRINK

By //s// Daniel Brink

Attorneys for Defendants

APPENDIX D

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

45014

KAREN MARCHIORO, ET AL.,
RESPONDENTS,

V.

NEALE V. CHANEY AND THE WASHINGTON STATE
DEMOCRATIC COMMITTEE,
APPELLANTS.

NOTICE OF APPEAL TO THE SUPREME COURT
OF THE UNITED STATES

(filed October 13, 1978)

Notice is hereby given that Karen Marchioro, William Baarsma, Richard Schroeder, Robert Fithian, Ruth Fisher, Doris Ebens, William Pierce, and Kathy Reid, respondents above-named, hereby appeal to the Supreme Court of the United States from the final judgment of the Supreme Court of Washington entered in this action on July 20, 1978, insofar as it reverses the judgment of the Superior Court for King County declaring unconstitutional as applied to the Washington State Democratic Party the requirements of RCW 29.42.020

regarding the size and geographic composition of party state committees.

This appeal is taken pursuant to 28 U.S.C. § 1257(2).

WICKWIRE, LEWIS, GOLDMARK,
DYSTEL & SCHORR

By_____
Charles A. Goldmark

Attorneys for Marchioro, et al.

[Filed simultaneously in the Superior Court for King County]

AFFIDAVIT OF SERVICE

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

PATRICIA J. ZUBER, being first duly sworn, on oath deposes and says: That she is a citizen of the United States, over the age of eighteen (18) years and not a party to or interested in the above-entitled action; that on the 13th day of October, 1978, she served a copy of the foregoing Notice of Appeal on all parties required to be served by mailing a copy of same by United States mail, first-class postage prepaid, to Mr. Winship A. Todd, Jr. of Trethewey & Brink, one of the attorneys for the appellees, 1500 Park Place Building, Seattle, Washington 98101

Patricia J. Zuber

SUBSCRIBED AND SWORN to before me this ____ day of October, 1978.

NOTARY PUBLIC in and for the State of Washington, residing at _____

APPENDIX E

RCW 29.42.020 State committee. The state committee of each major political party shall consist of one committeeman and one committeewoman from each county elected by the county committee at its organization meeting. It shall have a chairman and vice chairman who must be of opposite sexes. This committee shall meet during January of each odd-numbered year for the purpose of organization at a time and place designated by a sufficient notice to all the newly elected state committeemen and committeewomen by the authorized officers of the retiring committee. For the purpose of this section a notice mailed at least one week prior to the date of the meeting shall constitute sufficient notice. At its organizational meeting it shall elect its chairman and vice chairman, and such officers as its bylaws may provide, and adopt bylaws, rules and regulations. It shall have power to:

(1) Call conventions at such time and place and under such circumstances and for such purposes as the call to convention shall designate. The manner, number and procedure for selection of state convention delegates shall be subject to the committee's rules and regulations duly adopted;

(2) Provide for the election of delegates to national conventions;

(3) Fill vacancies on the ticket for any federal or state office to be voted on by the electors of more than one county;

(4) Provide for the nomination of presidential electors; and

(5) Perform all functions inherent in such an organization.

Notwithstanding any provision of this chapter, the committee shall not set rules which shall govern the conduct of the actual proceedings at a party state convention.

Supreme Court, U. S.
FILED
JAN 26 1979
MICHAEL RODAK, JR., CLERK

JOINT APPENDIX

IN THE

Supreme Court of the United States

October Term, 1978

No. 78-647

KAREN MARCHIORO, et al.,
Appellants,

v.

NEALE V. CHANEY and the WASHINGTON STATE DEMOCRATIC COMMITTEE,
Appellees.

ON APPEAL FROM THE SUPREME COURT
OF THE STATE OF WASHINGTON

JURISDICTIONAL STATEMENT FILED OCTOBER 17, 1978
PROBABLE JURISDICTION NOTED DECEMBER 11, 1978

IN THE

Supreme Court of the United States

No. 78-647

KAREN MARCHIORO, et al.,
Appellants,

v.

NEALE V. CHANEY and the WASHINGTON STATE DEMOCRATIC COMMITTEE,
Appellees.

ON APPEAL FROM THE SUPREME COURT
OF THE STATE OF WASHINGTON

INDEX TO JOINT APPENDIX

Page

Chronological List of Relevant Docket Entries 1

Affidavit of Karen Marchioro dated April 7, 1977 3

Charter of the Democractic Party of Washington (Attachment 1 to Affidavit of Karen Marchioro) 6

The following documents are reproduced as appendices to the Jurisdictional Statement filed October 17, 1978:

Opinion and Mandate of the Supreme Court of Washington (also reported at 90 Wn.2d 298 and 582 P.2d 487) ..... J.S. App. A

Opinion of the King County Superior Court.... J.S. App. B

Order and Judgment of the King County Superior Court ..... J.S. App. C

Notice of Appeal from the Washington Supreme Court ..... J.S. App. D

RCW 29.42.020 ..... J.S. App. E

RELEVANT DOCKET ENTRIES

In the Superior Court for King County

Complaint for Declaratory and Injunctive Relief	3/28/77
Affidavit of Service by Mail of the Complaint for Declaratory and Injunctive Relief on Slade Gorton, Attorney General of the State of Washington	4/30/77
Amended Complaint for Declaratory and Injunctive Relief (with Affidavit of Service by Mail on Slade Gorton, Attorney General of the State of Washington)	4/18/77
Plaintiffs' Motion for Partial Summary Judgment	5/13/77
Motion to Dismiss Plaintiffs' Amended Complaint for Declaratory and Injunctive Relief	5/18/77
Answer and Affirmative Defense to Amended Complaint for Declaratory and Injunctive Relief	5/20/77
Memorandum in Opposition to Plaintiffs' Motion for Partial Summary Judgment	5/23/77
Oral Opinion of King County Superior Court Granting Plaintiffs' Motion for Partial Summary Judgment	6/15/77
Order and Judgment of King County Superior Court	7/1/77
Defendants' Notice of Appeal to Washington Supreme Court	7/7/77

In the Washington Supreme Court

Appellants' (Defendants') Motion for Order Staying Effect of Order and Judgment of Superior Court	7/15/77

Respondents' (Plaintiffs') Motion for Expedited Appeal	7/26/77
Order of Washington Supreme Court Granting Motion to Stay and Setting Case for En Banc Hearing	7/28/77
Brief of Appellants	9/16/77
Brief of Respondents	10/14/77
Reply Brief of Appellants	10/25/77
Respondents' Motion to Vacate Stay of Trial Court's Judgment or (in the Alternative) for an Injunction to Preserve the Status Quo Pending Appeal	3/24/78
Washington Supreme Court Order Denying Motion to Vacate Stay of Enforcement of Trial Court's Judgment	3/29/78
Opinion of Washington Supreme Court	7/20/78
Mandate of Washington Supreme Court	8/11/78
Respondents' (Plaintiffs') Notice of Appeal to the Supreme Court of the United States	10/13/78
In the United States Supreme Court	
Appellants' (Plaintiffs') Jurisdictional Statement	10/17/78
Appellees' (Defendants') Motion to Affirm	11/16/78
Appellants' Reply to Motion to Affirm	11/22/78
Probable Jurisdiction Noted	12/11/78

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

KAREN MARCHIORO, ROBERT FITHIAN, RUTH FISHER, DORIS EVANS, WILLIAM PIERCE, and KATHY REID, *Plaintiffs*, v. NEALE V. CHANEY, and THE WASHINGTON STATE DEMOCRATIC COMMITTEE, *Defendants.*	No. 826358 AFFIDAVIT OF KAREN MARCHIORO*

STATE OF WASHINGTON } ss.
COUNTY OF KING }

KAREN MARCHIORO, being first duly sworn on oath, deposes and says:

1. I am the current Chairperson of the King County Democratic Party and have held this office since January 1974. I have been active in Democratic Party affairs in King County and the State of Washington since 1968. I was a delegate to the 1974 and 1976 Washington Democratic State Conventions.

2. I am familiar with the circumstances which led to the adoption of the Democratic Party Charter by the State Convention in 1976. I am also familiar with events which have occurred within the Party subsequent to the adoption of the Charter and with the selection of the Legislative District Organization Representatives to sit on the Washington State Democratic Committee pursuant to the Charter.

*Filed April 8, 1977 in support of Plaintiffs' Motion for Preliminary Injunction.

3. In 1974 the Washington Democratic State Convention resolved to appoint a Commission to draft a charter to be presented to the 1976 State Convention. Following the convention, a charter-drafting commission was formed, consisting of one member elected by each County Democratic Organization and two members elected by each Legislative District Organization. Dick Schroeder, Chairperson of the Spokane County Democratic Party, was elected Chairman of the Charter Commission.

4. The Charter Commission met a number of times during 1975 and 1976 to prepare a draft charter. Their draft was placed before the 1976 Democratic State Convention on June 12, 1976, with no dissenting minority reports. The Charter was adopted by an overwhelming voice vote. Attachment 1 is the Charter as adopted by the 1976 State Convention.

5. Article IV(G)(4) of the Charter provides that the State Democratic Committee, which is the governing body of the Party when the Convention is in adjournment, shall consist of two representatives from each of the State's thirty-nine counties plus one representative from each legislative district. Thus, the Charter changed previous Party rules which provided for a State Committee composed of two representatives from each county.

6. During January 1977 the Washington State Democratic Committee met in Olympia. Because the Committee skipped its summer and fall quarterly meetings in 1976, this was its first meeting after the 1976 Convention. At that meeting on January 29, Clay Bleck, State Committee Representative from Spokane County, moved to seat the Legislative District Organization Representatives to the Committee as required by the Charter. Chairman Chaney ruled Mr. Bleck's motion out of order. Mr. Bleck appealed Mr. Chaney's decision and lost, 17 to 56. The Legislative District Organization Representatives waiting to take their seats were prevented from doing so by this ruling.

7. The next meeting of the Democratic State Committee is set for April 16, 1977. Attachment 2 is the Agenda for that meeting circulated by the State Democratic Committee. No item appears on that Agenda to seat the 49 Legislative District Organization Representatives. The Agenda contains a proposed Charter Amendment regarding State Committee membership.

8. Robert Fithian, Doris Evans, William Pierce and Kathy Reid, are duly elected representatives to the State Democratic Committee from the 33rd, 27th, 4th and 3rd Democratic Legislative District Organizations respectively. All four individuals were among those not seated by the State Democratic Committee on January 29, 1977.

Dated this 7th day of April, 1977.

KAREN MARCHIORO

SUBSCRIBED AND SWORN to before me this 7th day of April, 1977.

s/ .....
NOTARY PUBLIC in and for the State of Washington, residing at Seattle

CHARTER OF THE DEMOCRATIC PARTY OF WASHINGTON**

As adopted by the Washington State Democratic Convention in Olympia, Washington on June 12, 1976.

PREAMBLE

We, the Democrats of the state of Washington, believe in the concepts expressed in the Declaration of Independence and the Constitution of the United States that all power to govern resides with the people. In accordance with the National Charter of the Democratic Party of the United States, we organize and pledge ourselves to promote a truly representative party open to all who support its principles.

We further pledge to make every effort to encourage maximum participation in the political process and to protect individual rights, civil liberties, our environment and social and economic justice for all.

Upon these basic principles we do hereby adopt this Charter of the Democratic Party of the state of Washington.

ARTICLE I
NAME

This organization shall be called the Democratic Party of the state of Washington.

ARTICLE II
PURPOSE AND OBJECTIVES

A. The Democratic Party of the state of Washington exists to:

1. Adopt and promote statements of policy to serve as standards for Democratic elected officials and goals for the people of the state.

**This document was filed as Attachment 1 to the Affidavit of Karen Marchioro dated April 7, 1977 (App. 3-5).

2. Nominate and assist in the election of Democratic candidates at all levels who support the goals of the party.
3. Administer the party organization in accordance with rules and standards which will facilitate achieving the goals of the party.
4. Establish standards and rules of procedure to afford all members of the Democratic Party full, timely and equal opportunities to participate in decisions concerning the selection of candidates, the formulation of policy, and the conduct of other party affairs without discrimination on the basis of sex, race, age (except where state and federal law precludes participation), religion, economic status or ethnic origin.
5. Promote fair campaign practices and fair adjudication of disputes.
6. Raise and disburse monies needed for the continuing operation of the Party.
7. Work with elected Democratic public officials at all levels to achieve the goals of the Democratic Party.
8. Encourage and support codes of political ethics governing all public officials in the conduct of their offices.
9. Encourage voter registration and voting.

ARTICLE III
MEMBERSHIP

A. The Democratic Party of the state of Washington shall be composed of:

1. Democratic precinct committeepersons.
2. Elected Democratic officials.

3. Members of Democratic county, legislative district, congressional district and state party organizations.
4. All residents of the state of Washington who are willing to support the principles and goals of the Democratic Party as expressed in the Charter and wish to be known as Democrats.
5. Members of those clubs and councils that are recognized by the State Democratic Committee.

ARTICLE IV
ORGANIZATIONS OR OFFICIALS AUTHORIZED TO FUNCTION CONTINUOUSLY

A. General: These organizations and officials are authorized by state statute, charter, or custom to function continuously to govern party affairs and to make party policy; they are not directly involved in selecting delegates.

B. Precinct committeepersons

1. Precinct committeepersons shall be elected, appointed or recalled according to state law.
2. Vacancies in the office of Precinct Committeeperson that exist because of failure to elect at a state general election shall not be filled until after the organization of the County Central Committee and/or Legislative District organization.
3. Vacancies that occur in this office by reason of death, resignation or permanent change of residence, change of voter registration from the precinct, by recall of the incumbent, or because of failure to elect shall be filled by appointment according to a procedure that affords every Democrat fair and equal opportunity.

C. Precinct Committees

1. Democrats residing in a precinct may form a Precinct Committee.
2. Precinct committees shall be composed of registered voters within the precinct who agree to the disclosure of their names as Democrats.
3. The Chairperson shall be the Precinct Committeeperson.

D. Legislative District Organizations

1. Legislative district organizations shall be organized in accordance with rules passed by the County Central Committee in those counties in which there are two or more complete legislative districts. Their function shall be similar to the county organization.
2. In any legislative district organization only elected precinct committeepersons and precinct committeepersons appointed after the organizational meeting shall vote for district chairperson, vice chairperson and any representative to other party organizations. Legislative district organizations may allow other Democrats to participate in all other functions.
3. Legislative district organizations shall be constituted and shall conduct business according to state law and this Charter. In legislative districts where counties have not provided for legislative district organizations meetings, the State Chairperson shall do so.
4. Legislative district organizations shall have a minimum of four (4) meetings per year.
5. Any legislative district may organize for purposes consistent with this Charter.

E. County Central Committee

1. The County Central Committee shall be the governing body of the county Democratic Party and shall have the responsibility for conducting party affairs at the county level. It shall be composed of all elected and appointed precinct committeepersons.
2. Each County Central Committee shall be organized according to state law. At its organizational meeting, the Committee shall elect a chairperson and a vice-chairperson; it shall elect state committeepersons and it shall adopt by-laws. The County Central Committee shall have a minimum of four (4) regular meetings a year unless there are legislative district organizations within the county.
3. The national, state and county platforms shall serve serve as policy guidelines for the County Central Committee.
4. The county by-laws shall establish a quorum and provide for calling special meetings by executive action or by petition of members.
5. In counties with legislative district organizations, the County Central Committee may establish a County Executive Board. Such a Board shall be fairly apportioned.

F. Congressional District Organizations

1. Any congressional district may organize for purposes consistent with this Charter.

G. State Democratic Committee

1. The State Democratic Committee shall be the governing body when the convention is in adjournment.

2. The State Democratic Committee shall organize and administer the State Democratic Party in accordance with state law, the National Charter, and this Charter.
3. The national and state convention platforms and state convention resolutions shall serve as policy standards for the State Democratic Committee.
4. The State Democratic Committee membership shall be organized according to state law: however, in addition to having two (2) delegates per county as voting members, each legislative district shall elect one voting member. Each district representative shall be allowed to vote on all matters or issues, policies and goals which would reasonably fall within the function of the state convention and as allowed by state law. Legislative district representatives shall be elected by the Legislative district organization at their organization meeting, or by the county chairpersons and the state committee persons of the counties within the district with their votes being weighted on the same basis as the last previous state convention in those districts with more than one county.
5. The State Democratic Committee shall meet at least four (4) times per year.
6. The State Democratic Committee shall adopt by-laws and operating procedures in accordance with existing state laws and this Charter.
7. The officers of the State Democratic Committee need not be members of the committee; but only elected members of the State Committee shall elect the offi-

cers. Officers of the outgoing State Committee, unless otherwise qualified, shall not vote in the election of new officers.

H. Clubs and Councils

Those clubs and councils recognized by the State Democratic Committee shall be considered Democratic party organizations.

I. Judicial Review Board

1. A Judicial Review Board shall be established.
2. It shall consist of two (2) members elected by each Congressional District Caucus during each State Convention. State committeepersons, county chairpersons, and district chairpersons shall not be eligible to serve.
3. Members of the Board shall take office the following January 1st, and shall serve for two (2) years.
4. A quorum shall be nine (9) of fourteen (14) members and no proxies or alternates shall be allowed.
5. Vacancies shall be filled by election by a caucus of the state Democratic committeepersons from the congressional district having a vacancy.
6. This Board shall consider questions of interpretation of the Charter, by-laws, delegate selection rules, affirmative action plans, and other adopted rules of the Democratic Party of the state of Washington and its component organizations. It shall make its recommendations in writing to each State Convention before the convention votes on any of its recommendations and before new members are elected to the Board.

7. The Board shall *not* function as a credentials or rules committee, although its findings and recommendations shall be considered relevant evidence in a credentials challenge.

ARTICLE V

PARTY ORGANIZATION CONVENED PERIODICALLY

A. General

1. All periodic organizations are part of the delegate selection process.
2. In addition to the selection of delegates, caucuses and conventions, except congressional district caucuses, may adopt platforms and resolutions as desired, and perform other functions inherent to such an organization.
3. Caucuses and conventions shall meet in even numbered years.

B. Precinct Caucuses

1. Precinct caucuses shall elect delegates to the County Convention and/or Legislative district caucuses.
2. Precinct caucuses shall be held in accordance with pertinent rules; the State Chairperson shall issue the call to caucus.
3. There shall be no registration fee or collections of money before or during caucus.
4. The number of delegates shall be determined by the County Central Committee.

C. Legislative District Caucus

1. The Legislative District Caucus shall elect delegates

to the State Convention. The same delegates shall also attend the appropriate Congressional District Caucus.

2. The Legislative District Caucuses shall be composed of delegates elected at the precinct caucuses.

D. County Convention

1. The County Convention shall be composed of delegates elected at the precinct caucuses.
2. The County Convention shall adopt a county platform and elect delegates to the Congressional District Caucus and State Convention; where there are multiple legislative districts in the county, the State Democratic Committee shall provide for legislative district caucuses to elect state convention delegates.
3. The counties allocated members of State Rules, Credentials and Platform Committees shall be elected at the County Convention.
4. The platform and resolutions of the County Convention shall serve as the policy standards for the County Democratic Party.

E. Congressional District Caucus

1. The Congressional District caucus shall elect all delegates to the National Convention.
2. Congressional district caucuses shall be composed of delegates to the State Convention.

F. State Convention

1. The State Democratic Convention shall be called by the State Committee once every two (2) years. This call shall be issued by the State Chairperson.

2. The purpose of the convention shall be to adopt a state party platform and to perform such functions as are inherent to such an organization.
3. The State Convention shall adopt their own rules.
4. The state platform and resolutions shall serve as the policy standards for the State Democratic Party.
5. The State Convention shall be considered the highest policy-making authority within the State Democratic Party.
6. The State Convention shall elect the National Committeepersons for terms of four (4) years.

ARTICLE VI

BASIC PRINCIPLES

A. Open Party

1. The Democratic Party of the State of Washington shall be open to all who support the Party and wish to be known as Democrats.
2. All members of the Party shall enjoy equal rights, protections and opportunities in all governing documents and in all proceedings of the party at all levels.
3. Discrimination on the basis of sex, race, age (except where state and federal law precludes participation), economic status, or ethnic origin is prohibited in the conduct of party affairs at all levels.
4. To the greatest extent possible all representatives shall be chosen from elected members.
5. The time, the place and a description of the legal and practical procedures of all delegate selection meet-

ings shall be publicized fully and in a manner to assure timely notice to all interested persons. Such delegate selection meetings must be held at reasonable times and in places accessible to all party members.

B. Full Participation

1. The Democratic Party of the State of Washington reaches out and seeks to bring all people and ideas into its affairs.

2. In order to encourage full participation by all Democrats of the State of Washington with particular concern for minority groups, in the delegate selection process and in all party affairs, the State and County Democratic Party organization shall adopt and implement affirmative action programs.

3. Affirmative Action: Performance under an approved Washington State Affirmative Action Program shall be considered relevant evidence in the challenge of any County delegation. If a county has adopted and implemented an approved and monitored State Affirmative Action Program, the county and legislative district shall not be subject to challenges based solely on delegate composition. This goal shall not be accomplished either directly or indirectly by the imposition of mandatory quotas at any level of the selection process or in any party affairs, as defined in the by-laws.

C. Fair Representation

1. In elections at all levels of the Party in which Party policy is determined or in which delegates, officers,

other Party officials, and nominees for public office are to be selected, procedures shall:

a. Provide full, equal, timely participation;

b. Assure fair, proportional representation of preferences;

c. Prohibit the unit rule; not require delegates to vote as a majority determines.

d. Prohibit winner-take-all selections until the highest possible level of selection;

e. Not deny participation for failure to pay a cost, fee or poll tax;

f. Provide whenever possible for direct and not secondary elections.

2. The Democratic Party Organization which is closest to the electorate and which encompasses the constituency of a public office shall select the nominees to fill a vacancy in that public office.

3. Democratic nominees and delegates should be selected by Democrats.

D. Majority Rule

1. Majority vote shall prevail in proceedings of this Party except when otherwise specified by statute, this Charter, By-laws or rules of order.

2. Majority vote shall permit those in the majority to organize a body, but those in the majority shall respect rights of those in the minority and take care not to exclude them from the organization.

3. Minority reports shall be considered and published whenever they are supported by a substantial minority, as defined by the By-laws or other rules.

E. Accountability

1. Those elected as Democrats have the obligation to support the principles of the Democratic Party.

2. The decisions and votes of a person holding a position of public trust should be a matter of public record.

ARTICLE VII

SPECIFIC PARTY PRACTICES

A. Delegate Selection Rules

1. Delegate selection rules shall govern precinct, legislative district and congressional district caucuses and county and state conventions.

2. Delegate selection rules adopted by any Democratic party organization shall conform to state law, to the guidelines adopted by the Democratic National Committee and to the basic principles of this Charter.

3. Any Democrat has the right to challenge any delegate or alternate to the county and state conventions or to the legislative and congressional district caucuses in accordance with the rules. No challenged delegate may vote on any matter pertaining to his or her own challenge.

4. The By-laws of the Democratic Party of the State of Washington shall include the more specific provisions of the delegate selection process.

B. Party Conference

State, county and district Democratic party organizations may hold annual party conferences to provide the

opportunity for Democratic party members to discuss and publicize political issues. These conferences should include participation by Democratic public and party officials.

C. Elections and Campaigns

Each state, county and district Democratic party organization shall:

1. Conduct candidate campaign workshops which the State Democratic Committee will arrange and staff in March of every year to instruct candidates on effective campaign procedures and organization.

D. Ballot Procedures

1. When individuals vote in public elections, secret ballots shall be used.

2. When a person votes as an elected representative, open ballots shall be used.

3. Proxies may be used in accordance with the National Charter.

ARTICLE VIII

GENERAL PROVISIONS

A. This Charter is intended to conform to state and federal statutes and to applicable parts of the Charter of the Democratic Party of the United States. If parts of this Charter are found to be in conflict with such statutes or the National Charter, the applicable statute or provision of the National Charter shall govern.

B. Whenever state or federal statutes preclude basic principles or substantive provisions of this Charter, the Democratic Party of the state of Washington shall con-

tinue to take positive steps to change the statutes to allow such principles and provisions of the Charter.

C. The State Democratic Committee shall publish and maintain current copies of this Charter and make them available on request.

ARTICLE IX

BY-LAWS AND RULES

A. By-laws of the Democratic Party of the state of Washington:

1. The Democratic Party of the state of Washington shall adopt by-laws to govern its affairs in those matters not fully specified by this Charter. The by-laws shall be consistent with and subject to this Charter, the Charter of the Democratic Party of the United States and state and federal law.

2. By-laws may be adopted or amended by affirmative vote of a majority of delegates voting at the State Convention.

3. By-laws may also be adopted or amended by affirmative vote of a majority of the entire membership of the State Democratic Committee.

4. The State Democratic Committee shall maintain copies of the current by-laws of the Democratic Party of the state of Washington and shall make them available on request.

B. Rules

1. Each official body of the Democratic Party of the state of Washington shall adopt its own written rules (including by-laws, if applicable) for the conduct of its affairs. These rules shall be consistent with this Charter, the by-laws of the Democratic Party of the state of Washington, state and federal laws and all provisions pursuant to the authority of this Charter.

2. Each official body of the Democratic Party of the state of Washington shall maintain copies of its own current rules and shall make them available on request.

3. The State Democratic Committee shall maintain copies of current rules of each official body of the Democratic Party of the state of Washington and make them available on request.

ARTICLE X

AMENDMENTS

A. This Charter may be amended by affirmative vote of a majority of all the delegates to the State Convention.

1. An amendment must be presented in writing to the State Chairperson by an elected delegate to the Convention at least ten (10) days before the chairperson issues the call to the Convention.

2. The State Chairperson shall then publish the full text of the proposed amendment in the call to the State Convention.

B. This Charter may also be amended by affirmative vote of two-thirds (⅔) of the entire membership of the State Democratic Committee.

1. An amendment must be proposed in writing by a member of the State Committee and be published in

full in the notice of the meeting of the State Committee sent to each member of the committee.

2. An amendment adopted by the State Committee shall be subject to ratification by the next State Convention, except that two-thirds (⅔) of the entire membership of the State Committee may affirm that an amendment shall take effect immediately and be effective until it is accepted, amended, or rejected by the next State Convention.

C. Newly adopted or amended provisions of this Charter shall take effect on the January 1st after they are adopted or ratified by the State Convention, unless otherwise specified by resolutions of the convention.

Supreme Court, U. S.
FILED
NOV 16 1978
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-647

KAREN MARCHIORO, ET AL.,
Appellants,

v.

NEALE V. CHANEY, ET AL.,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF WASHINGTON

MOTION TO AFFIRM JUDGMENT AND BRIEF IN SUPPORT OF MOTION

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SUBJECT INDEX

	Page
Motion	1
Question Presented On Appeal	1
Question Presented By This Motion	1
Parties	2
Facts	2
Argument	7
Conclusion	17

TABLES OF AUTHORITY

Table of Cases

American Party of Texas v. White, 415 U.S. 767 (1974) 12, 16

Bates v. Little Rock, 361 U.S. 516 (1960) 8, 9

Buckley v. Valeo, 424 U.S. 1 (1976) 12

Cousins v. Wigoda, 419 U.S. 477 (1975) 10-12, 14

Dahl v. Republican State Committee, 319 F. Supp. 682 (W.D. Wa. 1970) 3

Dunn v. Blumstein, 405 U.S. 330 (1972) 14

Fahey v. Darigan, 405 F. Supp. 1386 (D.R.I. 1975) ..13, 14

King County Republican Central Committee v. Republican State Committee, 79 Wn.2d 202, 484 P.2d 387 (1971) 4

Kusper v. Pontikes, 414 U.S. 51 (1973) 9-10, 14, 15

NAACP v. Alabama ex rel. Patterson, 357 U.S. 449 (1958) 8, 9

Nader v. Schaffer, 417 F. Supp. 837 (D. Conn. 1976), aff'd 429 U.S. 989, 97 S. Ct. 516 (1976) 15

Ripon Society v. National Republican Party, 525 F.2d 567 (D.C. Cir. 1975), cert. den. 424 U.S. 933 (1976) 13-14

	Page
Rosario v. Rockefeller, 410 U.S. 752 (1973)	14-15
Storer v. Brown, 415 U.S. 724 (1974)	15

Constitutional Provisions

U.S. Constitution, First Amendment	1
U.S. Constitution, Fourteenth Amendment	1

Statutes

Arizona Rev. Stat., § 16-233	16
Ark. Stat., 1947, § 3.102	16
Baldwin & Page's Ohio Rev. Code, § 3517.03	16
California Election Code, §§ 8660-8675	16
Code of Laws of S. Carolina, § 7-9-90	16
Col. Rev. Stat., § 1-14-108(2)	16
Idaho Code, § 34-504	16
Ill. Rev. Stat., § 46-7-8(a)	16
Indiana Code 3-1-2-1	16
Iowa Code, § 43.111	16
Kan. Stat. Anno., § 25-3804	16
La. Rev. Stat., § 18:285(1)(a)	16
Laws of 1909, ch. 82, § 6, p. 175	3
Laws of 1927, ch. 200, § 1, p. 287	3
Mass. Gen. Laws, Ch. 52, § 1	16
McKinney's Con. Laws of New York Anno., § 2-102(1)	16
Michie's Code, Ch. 3, Article 1, § 9	16
Mich. Stat. Anno., § 6.1597	16
Miss. Code, § 23-1-3(a)	16
Montana Rev. Code, § 23-3403(b)	16

	Page
Mo. Rev. Stat., § 115.623	16
Nev. Rev. Stat., § 293.153	16
New Jersey Rev. Stat., Title 19, Ch. 5, § 4	16
N. D. Century Code Anno., § 16-17-11	16
N. H. Rev. Stat. Anno. Ch. 56, § 63	16
Official Tenn. Code Anno., § 2-1304	16
Or. Rev. Stat., § 248.075(1)	16
RCW 29.18.200	7
RCW 29.42.020	1, 2, 3, 4, 6, 7, 8 *et seq.*
S. D. Cod. Laws, § 12-5-16	16
Vt. Stat. Anno., § 17-730	16
Wy. Stat., § 22-4-110	16

Other Authorities

Charter of the Democratic Party of Washington,	
Article II	17
Article IV(G)(4)	5, 6
Article VIII(A)	5
H. B. 152, 45th Leg. (1977)	6
H. B. 507, 42nd Leg. (1971)	6
H. B. 545, 44th Leg. (1975)	6
H. B. 598, 45th Leg. (1977)	6
H. B. 747, 43rd Leg. (1973)	6
H. B. 850, 45th Leg. (1977)	6
S. B. 2481, 45th Leg. (1977)	6

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ON APPEAL FROM THE SUPREME COURT OF THE STATE OF WASHINGTON

MOTION TO AFFIRM JUDGMENT AND BRIEF IN SUPPORT OF MOTION

MOTION

Appellees move for an order affirming the judgment of the Supreme Court of the State of Washington, filed July 20, 1978, 90 Wn.2d 298, 582 P.2d 487, holding that RCW 29.42.020 does not violate the First and Fourteenth Amendments of the United States Constitution.

QUESTION PRESENTED ON APPEAL

Is a state statute under which the membership of the Washington State Democratic Committee is set at two members from each county unconstitutional?

QUESTION PRESENTED BY THIS MOTION

Was the Supreme Court of the State of Washington

correct in holding that appellants failed to demonstrate that their freedom of association was substantially burdened by a state statute setting the membership of the Washington State Democratic Committee at two members from each county?

PARTIES

Appellants, hereinafter referred to as "plaintiffs," consist of eight individuals. Three of the plaintiffs are chairmen of county central committees of the Democratic Party of the State of Washington. Four other plaintiffs allege they are elected representatives to the Washington State Democratic Committee from Democratic legislative district organizations in Washington. The eighth plaintiff is a member of the Washington State Democratic Committee. All plaintiffs allege they are "members" of the Democratic Party of the State of Washington.

Appellee Neale V. Chaney was, at the time the suit was filed, Chairman of the Washington State Democratic Committee. Chaney left that position in August 1978, and is no longer associated with the Washington State Democratic Committee.

The other appellee is the Washington State Democratic Committee, hereinafter "State Committee," whose function is discussed below.

FACTS

RCW 29.42.020 states, in relevant part:

> "*State Committee.* The State Committee of each major political party shall consist of one committeeman and one committeewoman from each county elected by the county committee at its organizational meeting."

This statute is part of a continuous line of Washington

statutes creating and regulating the state committees of major state political parties. The first, enacted in 1909, set the composition of the State Committee at one member from each county committee. Laws of 1909, ch. 82, § 6, p. 175. In 1927, the membership was changed to one committeeman and one committeewoman from each county. Laws of 1927, ch. 200, § 1, p. 287. Consequently, the statutory scheme attacked by plaintiffs is almost 70 years old.

The functions of the State Committee were considered and described in *Dahl v. Republican State Committee*, 319 F. Supp. 682 (W.D. Wa. 1970), in which the Democratic State Committee was a named defendant.[1] The district court found that the State Committee performed the following functions:

> "The election of the state committee *is not an integral phase of the presidential-election process.* . . . Like *Sailors*, the functions performed by the state and county committees are *primarily administrative in nature and concern themselves almost exclusively with the internal affairs of the political parties.* No governmental or representative functions are performed by the state committees except insofar as they exercise their prerogative to appoint delegates to the national party conventions and thereby bring their actions within the rule announced in the *Maxey* case. For these reasons, *and because the election of state committeemen by the county committees is not an integral phase of the state-created election process,* I hold that the one-man-one-vote principal does not control the selection of the state committees of the major political parties." 319 F. Supp. at 684-685. (Emphasis supplied)

1. In *Dahl*, RCW 29.42.020 was challenged on the grounds that it violated the Equal Protection Clause of the Fourteenth Amendment. The district court rejected the contention, holding that there was no requirement under the Fourteenth Amendment that the State Committee be apportioned on the basis of population. 319 F. Supp. at 684-685.

A further description of the duties of the State Committee occurs in *King County Republican Central Committee v. Republican State Committee,* 79 Wn.2d 202, 484 P.2d 387 (1971).

> "As a committee designed to function on a statewide level, it is necessarily invested with the inherent power to adopt rules and regulations for its own internal government, as well as to promulgate, subject to the overriding authority of the state convention, intra-party rules governing the statewide operations of the party as a political organization during the interval between conventions." 79 Wn.2d at 212.

Finally, the State Committee is given the following powers by statute:

> "(1) Call conventions at such time and place and under such circumstances and for such purposes as the call to convention shall designate. The manner, number and procedure for selection of state convention delegates shall be subject to the committee's rules and regulations duly adopted;
>
> "(2) Provide for the election of delegates to the national conventions;
>
> "(3) Fill vacancies on the ticket for any federal or state office to be voted on by the electors of more than one county;
>
> "(4) Provide for the nomination of presidential electors; and
>
> "(5) Perform all functions inherent in such an organization." RCW 29.42.020.

The State Committee does not exercise party policy-making functions. While the State Committee has raised and distributed some money, the amounts have been small, and have gone to the administration of the State Committee, payment of debts, and distribution to Democratic Party candidates nominated to run for office.

In 1976, the Washington State Democratic Convention adopted a Charter of the Democratic Party of Washington, hereinafter "Charter." Article IV(G) (4) of the Charter provides:

> "The State Democratic Committee membership shall be organized according to state law; however, in addition to having two (2) delegates per county as voting members, each legislative district shall elect one (1) voting member. Each district representative shall be allowed to vote on all matters or issues, policies and goals which would reasonably fall within the function of the State Convention and as allowed by state law." Quoted in *Marchioro v. Chaney,* 90 Wn.2d at 301.

This change in the composition of the State Committee from that mandated by RCW 29.42.020 has not been implemented by the State Committee. In the first place, not all legislative district representatives have been elected, and it has been the consistent position of the State Committee that no legislative district representatives shall be seated until all have been elected. Furthermore, the State Committee's position is that by seating the legislative district representatives, it will be in violation of state statute, a situation the State Commmittee understandably wishes to avoid.[2]

Plaintiffs filed this suit in the Superior Court of King County, Washington, requesting, *inter alia,* declaratory relief that the State Committee must be operated in accordance with the Charter, and that those plaintiffs who were validly elected legislative district representatives, were to

2. Resistance to the seating of the legislative district representatives is also mandated by the Charter. Article VIII(A) provides as follows:

> "This Charter is intended to conform to state and federal statutes and to applicable parts of the Charter of the Democratic Party of the United States. If parts of this Charter are found to be in conflict with such statutes or the National Charter, the applicable statute or provision of the National Charter shall govern."

be seated before the State Committee could transact any business. The Superior Court held that RCW 29.42.020 unconstitutionally violated plaintiffs' First Amendment freedom of association, but did not order the seating of the legislative district representatives. Order and Judgment, Appendix to Jurisdictional Statement, p. C-3. The Supreme Court of the State of Washington reversed the superior court's finding of unconstitutionality, on the grounds that plaintiffs had failed to show that RCW 29.42.020 substantially burdened plaintiffs' right of free association. 90 Wn.2d at 312-313. The court further found that the Charter was binding on the State Committee, except for Article IV (G) (4), which conflicted with RCW 29.42.020.

Plaintiffs have never presented this controversy to the National Democratic Party, or its National Committee, in any fashion. However, this controversy has often been considered by the Washington State Legislature, which has refused to enact the change for which plaintiffs are pressing. These refusals have occurred even though the legislature has been controlled by the Democratic Party since 1970 (with the exception of 1970-1972, when the Republican Party controlled the Washington House of Representatives). The state legislature is, of course, apportioned on the basis of population.[3]

3. Relevant bills include H.B. 152, 45th Leg. (1977) (added legislative district representatives and deleted sexual classifications); H.B. 598, 45th Leg. (1977) (removed provisions defining composition and gender of committee); H.B. 850, 45th Leg. (1977) (removed gender provisions and allowed parties to add legislative district representatives); S.B. 2481, 45th Leg. (1977) (similar to H.B. 152, *supra*); H.B. 545, 44th Leg. (1975) (similar to H.B. 152, *supra*); H.B. 747, 43rd Leg. (1973) (added legislative district representatives); and H.B. 507, 42nd Leg. (1971) (substituted legislative district representatives for county representatives). None of these bills left committee.

ARGUMENT

In their Jurisdictional Statement, plaintiffs assert that RCW 29.42.020 substantially burdens their First Amendment freedom of association in the following ways:

A. State regulation of the internal organizations of political parties by itself substantially burdens the rights of party members (Jurisdictional Statecent, p. 10);[4]

B. An individual's right to participate in party affairs is substantially burdened where a statute bars or discourages such participation (Jurisdictional Statement, p. 13);

C. The constitutional right of those plaintiffs elected as legislative district representatives to serve on the State Committee has been substantially burdened (Jurisdictional Statement, p. 7);

D. The constitutional right of party "members" to elect and be represented on a State Committee composed as directed by the State Convention has been burdened (Jurisdictional Statement, p. 8);

E. The constitutional right of the party to administer itself on the basis of equal rights and proportional representation has been substantially burdened (Jurisdictional Statement, p. 8, n. 11);[5]

None of the alleged burdens claimed by the plaintiffs describes a substantial burden of a right protected by the

4. Plaintiffs claim that they are "members" of the Democratic Party of the State of Washington. Plaintiffs cannot claim this status, however, separately from their position as officers in the various Democratic Party organizations, since the Democratic Party itself has no formal procedure by which individuals become members. Moreover, there are no statutory methods for becoming "members". RCW 29.18.200 states:

> "*Blanket Primary Authorized.* All properly registered voters may vote for their choice at any primary election, for any candidate for each office, regardless of political affiliation and without a declaration of political faith or adherence on the part of the voter."

5. *Dahl, supra,* held that there was no requirement under the Equal Protection Clause for the State Committee to be apportioned on the basis of population.

freedom of association guaranteed by the First Amendment. Furthermore, the holding of the Supreme Court of the State of Washington that RCW 29.42.020 does not substantially burden the carrying out by the Democratic Party of its "Purposes and Objectives" is correct. Hence, the decision of the Supreme Court of the State of Washington must be affirmed.

The freedom of association upon which plaintiffs try to rely has its roots in *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449 (1958), and *Bates v. Little Rock*, 361 U.S. 516 (1960). In the former case, the NAACP was sued because of its failure to pay the Alabama corporate license fee. During discovery, Alabama requested a list of the NAACP's members, which the NAACP refused to produce. This Court, discussing the freedom of association, said:

> "*Effective advocacy of both public and private points of view*, particularly controversial ones, is undeniably enhanced by group association, as this Court has more than once recognized by remarking upon the close nexus between the freedoms of speech and assembly. [Citations omitted] It is beyond debate that freedom to engage in association *for the advancement of beliefs and ideas* is an inseparable aspect of the 'liberties' assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech. [Citations omitted] . . . It is hardly a novel perception that compelled disclosure of affiliation with groups engaged in advocacy may constitute as effective a restraint on freedom of association as the forms of governmental action in the cases above were thought likely to produce upon the particular constitutional rights there involved." 357 U.S. at 460, 462. (Emphasis supplied)

This Court held that, in the circumstances of the case, disclosure of the membership list of the NAACP constituted a substantial burden on its constitutional rights with

no countervailing compelling state interest, and the state court's judgment of civil contempt was reversed.

In *Bates*, a city licensing ordinance provision required disclosure of the NAACP's membership lists. This Court struck down that provision, stating:

> "[F]reedom of association *for the purpose of advancing ideas and airing grievances* is protected by the Due Process Clause of the Fourteenth Amendment from invasion by the state." 361 U.S. at 523. (Emphasis supplied)

Thus, both *NAACP v. Alabama* and *Bates* dealt with the question of compelled disclosure of membership in a group, and "the vital relationship between freedom to associate and privacy in one's associations." *Bates*, 361 U.S. at 523. These cases thus dealt with state interference with the freedom of individuals to form groups to exercise their First Amendment freedoms of speech and petition, not state regulation of the internal structure of the groups which resulted.

A further aspect of the freedom of association was set forth in *Kusper v. Pontikes*, 414 U.S. 51 (1973). There this Court held unconstitutional an Illinois statute prohibiting an individual's voting in a political party's primary election where that individual had voted in the primary election of another party within the preceding 23 months. The Court held that the right to associate with the political party of one's choice was an integral part of the constitutionally protected freedom of association, 414 U.S. at 57, and that infringement of the right to select the party's candidate for public office in primary elections substantially infringed this freedom.

> "Under our political system, *a basic function of a political party is to select the candidate for public*

> *office to be offered to the voters at general elections.* A prime objective of most voters in associating themselves with a particular party must surely be to gain a voice in that selection process. By preventing the appellee from participating at all in Democratic primary elections during the statutory period, the Illinois statute deprived her of any voice in choosing the party's candidates, and thus substantially abridged her ability to associate effectively with the party of her choice." 414 U.S. at 58. (Emphasis supplied)

RCW 29.42.020 does not exclude plaintiffs in the present case from participating to the same extent as any other citizen in the affairs of the Democratic Party, nor are plaintiffs excluded from any role in selecting the party's candidates for public office. Thus, *Kusper* does not support plaintiffs' claims that the statute substantially burdens their constitutionally protected rights.

Plaintiffs rely substantially on *Cousins v. Wigoda*, 419 U.S. 477 (1975). In that case, delegates elected to the National Democratic Convention pursuant to Illinois statute were not seated by the Convention; instead, a second slate of delegates, not selected pursuant to Illinois statute, was seated by the Convention and allowed later to choose the Illinois representatives to the Democratic National Committee. The Illinois state court held that the second slate of delegates had violated an Illinois court injunction preventing the group from carrying out the functions of delegates. This Court reversed the Illinois court's findings.

The issue in *Cousins* was "whether the Appellate Court was correct in according primacy to state law over the National Political Party's rules in the determination of the qualifications and eligibility of delegates to the Party's National Convention." 419 U.S. at 483. This Court's resolution of the issue was on a narrow and particular basis.

> "But respondents overlook the significant fact that the suffrage was exercised at the *primary election to elect delegates to a National Party Convention. Consideration of the special function of delegates to such a Convention militates persuasively against the conclusion that the asserted interest constitutes a compelling state interest.* Delegates perform a task of supreme importance to every citizen of a Nation regardless of their State of residence. The vital business of the Convention is the nomination of the Party's candidates for the offices of President and Vice President of the United States. . . . If the qualifications and eligibility of delegates to National Political Party Conventions were left to state law 'each of the 50 states could establish the qualifications of its delegates to the various party conventions without regard to party policy, an obviously intolerable result.' *Wigoda v. Cousins*, 342 F. Supp. 82, 86 (N.D. Ill. 1972). Such a regime could seriously undercut or indeed destroy the effectiveness of the National Party Convention as a concerted enterprise engaged in *the vital process of choosing Presidential and Vice-Presidential candidates—a process which usually involves coalition cutting across state lines. The Convention serves the pervasive national interest in the selection of candidates for national office, and this national interest is greater than any interest of an individual State.*" 419 U.S. at 489-490. (Emphasis supplied)

Plaintiffs try to extrapolate from *Cousins* the principle that any *state* statute that regulates internal bodies of a *state* political party substantially burdens the party members' freedom of association. Such a conclusion completely ignores the issue and holding of *Cousins*. The controversy in the present case has nothing to do with a national convention or nomination of national candidates. This case deals with *state* regulation of part of a *state* political party.

> "I also agree with the Court that this case intimates no views regarding other efforts to regulate party conventions. Congressional regulation of state conventions or state regulation of state primaries or conventions for state offices raises different considerations requiring a wholly different balance." 419 U.S. at 497, n.*, Powell J. concurring in part, dissenting in part.

Moreover, *Cousins*, and its predecessors, dealt with the freedom of association as part of freedom of speech, the freedom to advance ideas, create controversy, and choose candidates to attempt to implement these ideas through the government. These are the very purposes and functions of national, state and local conventions. The State Committee in this case serves none of these functions, see pp. 2-4, *supra*, and especially not the functions served by the convention in *Cousins*. RCW 29.42.020 places no burden on plaintiffs' rights to attend and participate in national, state or local conventions, nominate national, state or local candidates, or advocate or implement in government the aims of the Democratic Party of the State of Washington. *Cousins* does not extend to protect the alleged substantial burdens upon which plaintiffs base their claims in this cause. See p. 7, *supra*.

The burden is upon the plaintiffs to demonstrates an actual substantial restraint of their First Amendment associational rights. *American Party of Texas v. White*, 415 U.S. 767, 790 (1974). Plaintiffs have shown no burden on any right protected under the decisions of this Court.

> "[G]roup association is protected because it enhances 'effective advocacy.'" *Buckley v. Valeo*, 424 U.S. 1, 65 (1976).

Plaintiffs have not demonstrated that RCW 29.42.020 burdens their "effective advocacy."

Plaintiffs also rely heavily on two lower court cases, *Ripon Society v. National Republican Party*, 525 F.2d 567 (D.C. Cir. 1975), *cert. denied* 424 U.S. 933 (1976), and *Fahey v. Darigan*, 405 F. Supp. 1386 (D.R.I. 1975). In *Ripon Society*, plaintiffs attacked the allocation formula for delegates to the 1976 National Republican Convention, arguing that the party was bound by the one-man, one-vote rule. The Court of Appeals refused to decide whether the case involved state action, 525 F.2d at 576, or whether the issue was justiciable, 525 F.2d at 578, and instead went to the application of the Equal Protection Clause. The court concluded that, assuming the clause applied, it did not require the National Convention to adhere to a one-man, one-vote apportionment, but could be satisfied if the representational scheme "rationally advanced some legitimate interest of the party in winning elections or otherwise achieving its political goals." 525 F.2d at 586-587. The court then approved the delegate selection process chosen by the party.

Thus, on its facts, the case does not apply to the present case. *Ripon Society* involved application of the Equal Protection Clause, not freedom of association. *Ripon Society* involved the make-up of delegations to a *national* nominating convention, not the composition of a *state* political body. Further, *Ripon Society* involved a *convention*, whose functions are vastly different from the functions of the State Committee. The holding of *Ripon Society* is thus consistent with *Cousins*, but in no way controlling in the instant case.

Plaintiffs rely upon some broad language used by the Court of Appeals in *Ripon Society*. The language used in *Ripon Society* was overly broad and went far beyond the issues the court had before it. The unnecessary breadth of

the *Ripon Society* opinion has been recognized by other courts. *Montano v. Lefkowitz,* 575 F.2d 378, 384 (2d Cir. 1978).

In *Fahey v. Darigan, supra,* the district court considered a Rhode Island statute requiring ward committees in the city of Providence to be made up of 19 members. This statute altered the long-time practice of the Democratic Party of having 11-member ward committees. The district court held that the statute violated the freedom of association of the plaintiffs, registered Democratic voters.

The district court in *Fahey v. Darigan* made two fundamental errors in arriving at its decision. First, it failed to make the distinction between those activities protected by freedom of association, that is, group expression, advocacy of ideas, and selection of candidates, which occur in party conventions and party primaries, and internal administrative organizations of political parties. *Cousins v. Wigoda,* 419 U.S. at 487; *Kusper v. Pontikes,* 414 U.S. at 56. Secondly, the district court completely misinterpreted *Cousins.* In *Cousins,* this Court held that the federal interests involved in allowing a party to constitute its National Convention as it desired outweighed the state interest in protecting the integrity of its electoral process. 419 U.S. at 489-491. The district court specifically rejected Justice Powell's concurrence on that very point at 419 U.S. at 497, n.* (quoted p. 9, *supra*). 405 F. Supp. at 1395. Consequently, the reasoning of *Fahey v. Darigan* must be rejected.

This Court has repeatedly recognized the important interest states have in controlling and regulating state elections and the state electoral process. *Dunn v. Blumstein,* 405 U.S. 330 (1972). *Rosario v. Rockefeller,* 410 U.S. 752

(1973). In *Storer v. Brown,* 415 U.S. 724 (1974), this Court said:

> "Moreover, as a practical matter, there must be a a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic processes. In any event, the States have evolved comprehensive, and in many respects complex, election codes regulating in most substantial ways, with respect to both federal and state elections, the time, place and manner of holding primary general elections, the registration and qualifications of voters, and the selection and qualification of candidates.
>
> "It is very unlikely that all or even a large portion of the state election laws would fail to pass muster under our cases . . . ." 415 U.S. at 730.

Furthermore, as Justice Blackmun said in *Kusper v. Pontikes, supra*:

> "Surely, at some point, the important interest of the State in protecting its entire electoral system outweighs a minor and incidental burden that happens to fall on a few uniquely situated citizens." 414 U.S. at 63-64, dissenting opinion.

In *Nader v. Schaffer,* 417 F. Supp. 837 (D. Conn. 1976), *affirmed* 429 U.S. 989, 97 S.Ct. 516 (1976), plaintiffs challenged Connecticut's primary system. The district court rejected the challenge, and said:

> "In addition to protecting the associational rights of party members, a state has a more general, but equally legitimate, interest in protecting the overall integrity of the historic electoral process. This includes preserving parties as viable and identifiable interest groups; insuring that the results of primary elections, in a broad sense, accurately reflect the voting of party members." 417 F. Supp. at 845.

RCW 29.42.020 is part of the State of Washington's regulation of its election process. Through its statutes,

the state insures that each major political party, having established itself as such, shall have an administrative body between state party conventions. By doing so, the state is insuring the stability and integrity of the electoral process.[6]

Thus, plaintiffs have not carried their burden of demonstrating that RCW 29.42.020 substantially burdens any of their rights protected under the First Amendment freedom of association. State regulation does not automatically create a substantial burden. Instead, an actual substantial burden must be proven by plaintiffs. *American Party of Texas, supra,* 415 U.S. at 790. There is no showing that the plaintiffs have been barred or discouraged from participating to the same extent as any other citizen in the affairs of the Democratic Party. The cases cited by the plaintiffs do not give them a constitutional right to serve on a state party's state committee performing the functions of the Washington State Democratic Committee, nor do these cases create a constitutional right to structure a state political party in any manner plaintiffs see fit, unfettered by state regulation.

6. The following states have, as part of their regulation of the electoral process, also legislated as to the composition of political party state committees: Arizona (Arizona Rev. Stat., § 16-233); Arkansas (Ark. Stat., 1947, § 3.102); California (Election Code, §§ 8660-8675); Colorado (Col. Rev. Stat., § 1-14-108(2)); Idaho (Idaho Code, § 34-504); Illinois (Ill. Rev. Stat., § 46-7-8(a)); Indiana (Indiana Code 3-1-2-1); Iowa (Iowa Code, § 43.111); Kansas (Kan. Stat. Anno., § 25-3804); Louisiana (La. Rev. Stat., § 18:285(1) (a)); Maryland (Michie's Code, Article 33, § 11-2(a) (1), *et seq.*); Massachusetts (Mass. Gen. Laws, Ch. 52, § 1); Michigan (Mich. Stat. Anno., § 6.1597); Mississippi (Miss. Code, § 23-1-3(a)); Missouri (Mo. Rev. Stat., § 115.623); Montana (Montana Rev. Code, § 23-3403(b)); Nevada (Nev. Rev. Stat., § 293.153); New Hampshire (N.H. Rev. Stat. Anno., Ch. 56, §63); New Jersey (Rev. Stat., Title 19, Ch. 5, § 4); New York (McKinney's Con. Laws of New York Anno., § 2-102(1)); North Dakota (N.D. Century Code Anno., § 16-17-11); Ohio (Baldwin & Page's Ohio Rev. Code, § 3517.03); Oregon (Or. Rev. Stat., § 248.075(1)); South Carolina (Code of Laws of S. Carolina, § 7-9-90); South Dakota (S.D. Cod. Laws, § 12-5-16); Tennessee (Official Tenn. Code Anno., § 2-1304); Vermont (Vt. Stat. Anno., § 17-730); West Virginia (Michie's Code, Ch. 3, Article 1, § 9); Wyoming (Wy. Stat., § 22-4-110).

Furthermore, the Supreme Court of the State of Washington, in its opinion in this case, found that the plaintiffs had failed to show that RCW 29.42.020 imposed any burden upon the "Purposes and Objectives" of the party as set forth in the Charter, Article II. 90 Wn.2d at 310-311. This finding is a further confirmation that plaintiffs have suffered no actual substantial burden on any rights protected by the First Amendment freedom of association. These findings are amply supported by the opinion of the Supreme Court of the State of Washington, and no further argument is required here.

For this reason, the decision of the Supreme Court of the State of Washington must be affirmed.

CONCLUSION

Appellees respectfully submit that the judgment of the Supreme Court of the State of Washington must be affirmed.

DATED this 15th day of November, 1978.

Respectfully submitted,

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Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-647

KAREN MARCHIORO, ET AL.,
Appellants,

v.

NEALE V. CHANEY AND THE WASHINGTON STATE DEMOCRATIC COMMITTEE,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF WASHINGTON

APPELLANTS' REPLY TO MOTION TO AFFIRM JUDGMENT

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TABLE OF CONTENTS

	Page
Facts	1
The Question Presented is Substantial	3
Conclusion	9

TABLE OF AUTHORITIES

Cases

American Party of Texas v. White, 415 U.S. 767 (1974) 7

Bates v. Little Rock, 361 U.S. 516 (1960) 3

Brotherhood of Railroad Trainmen v. Virginia State Bar, 377 U.S. 1 (1964) 4, 5-6

Cousins v. Wigoda, 419 U.S. 447 (1975) 4, 5

Fahey v. Darigan, 405 F. Supp. 1386 (D.R.I. 1975) 5

King County Republican Central Committee v. Republican State Committee, 79 Wn.2d 202, 484 P.2d 387 (1971) 2

Kusper v. Pontikes, 414 U.S. 51 (1973) 4, 6, 7

Marchioro v. Chaney, 90 Wn.2d 298, 582 P.2d 487 (1978) 1, 2

NAACP v. Alabama ex. rel. Patterson, 357 U.S. 449 (1958) 3

Nader v. Schaffer, 417 F. Supp. 837 (D. Conn. 1976), aff'd 429 U.S. 989 (1976) 6

Ripon Society v. National Republican Party, 525 F.2d 567 (CADC (1975), cert. denied, 424 U.S. 933 (1976) 5

Storer v. Brown, 415 U.S. 724 (1974) 6

Statutes and Constitutional Provisions

Arizona Rev. Stat., § 16-233 8

Ark. Stat., 1947, § 3.102 7

Baldwin & Page's Ohio Rev. Code, § 3517.03 8

California Election Code §§ 8660-8675 8

	Page
Code of Laws of S. Carolina, § 7-9-90	8
Col. Rev. Stat., § 1-14-108(2)	8
Idaho Code, § 34-504	8
Ill. Rev. Stat., § 46-7-8(a)	8
Indiana Code 3-1-2-1	7, 8
Iowa Code, § 43.111	8
Kan. Stat. Annot., § 25-3804	8
La. Rev. Stat., § 18:285(1)	8
Mass. Gen. Laws, Ch. 52, § 1	8
McKinney's Con. Laws of New York Annot., § 2-102(1)	7
Michie's Code of Maryland, Article 33, § 11-2(a)	7
Michie's Code of West Virginia, Ch. 3, Article 1, § 9	8
Mich. Stat. Annot., § 6.1597	8
Miss. Code, § 23-1-3(a)	8
Mo. Rev. Stat., § 115.623	8
Montana Rev. Code, § 23.3403(b)	8
Nev. Rev. Stat., § 293.153	7, 8
N.D. Century Code Annot., § 16-17-11	8
N.J. Rev. Stat. Title 19, ch. 5, § 4	8
N.H. Rev. Stat. Annot., Ch. 56, § 63	7, 8
Official Tenn. Code Annot., § 2-1304	8
Or. Rev. Stat., § 248-075(1)	8
S.D. Cod. Laws, § 12-5-16	8
Vt. Stat. Annot., § 17-730	8
Wy. Stat., § 22-4-110	8
RCW 29.42.020	*passim*
United States Constitution, Amend. I	*passim*
Miscellaneous	
Charter of the Democratic Party of Washington	*passim*

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FACTS

Appellees concede the facts and holdings below that squarely present the question whether appellants' First Amendment rights are substantially burdened by RCW 29.42.020.

First, appellees recognize that the State Democratic Convention is the supreme State Democratic Party authority and that the charter adopted by the 1976 Convention is binding on the State Committee unless prohibited by valid state law. *See* Motion to Affirm at 6; 90 Wn.2d at 313 (Juris. State., App. A at 16).

Second, appellees admit that this charter mandates a State Committee made up of two delegates per county plus one delegate from each legislative district. *See* Motion to Affirm at 5.

Third, appellees recognize that appellants are party members and officers and that several appellants are delegates elected from legislative districts to the State Committee. *See* Motion to Affirm at 2.

Fourth, appellees admit that RCW 29.42.020 compels them to bar legislative district representatives, including appellants, from the State Committee and from participating in its political activities. *See* Motion to Affirm at 5.[1]

Fifth, appellees acknowledge the State Committee's integral role in the Democratic Party's state political apparatus. As recognized by appellees, the State Committee makes "'*intraparty rules governing the statewide operations of the party as a political organization* between conventions'"[2] and raises and distributes money to party candidates. *See* Motion to Affirm at 4.

On the basis of these facts, the court below held that the burdens that RCW 29.42.020 places on appellants' First Amendment rights are not sufficient even to require inquiry into whether a state interest justifies the restrictions.

1. Appellees state that "resistance to the seating of the legislative district representatives" is mandated by the party charter. Motion to Affirm at 5 n.2. While the nature of appellees' argument is not clear, it is sufficient for the purposes involved here to note that the court below clearly held that the only bar to the seating of the legislative district representatives is RCW 29.42.020 and that, if that statute is unconstitutional, the legislative district representatives would be seated. *See* 90 Wn.2d at 314 (Juris. State., App. A at 17).

2. Motion to Affirm at 4, *quoting King County Republican Central Committee v. Republican State Committee*, 79 Wn.2d 202, 212, 484 P.2d 387 (1971) (emphasis added).

THE QUESTION PRESENTED IS SUBSTANTIAL

Appellees recognize that RCW 29.42.020 bars appellants and all Democratic Party members from implementing their convention's decision regarding the composition of their party's State Committee and prohibits several appellants from serving in their party-authorized roles as participants in the decisions of the State Committee. *See* Motion to Affirm at 7. Appellees also recognize that RCW 29.42.-020 frustrates the party's attempts to administer itself on the basis of its charter's command of equal rights and proportional representation for its members. *See id.* Nonetheless, appellees assert:

> None of the alleged burdens claimed by the plaintiffs describes a substantial burden of a right protected by the freedom of association guaranteed by the First Amendment.

Id. at 7-8.

Appellees cite no authority in support of this astonishing assertion but instead rely entirely on attempts to distinguish the precedent cited in appellants' Jurisdictional Statement. Appellees' purported distinctions are blatantly contrary to established First Amendment doctrine.

For example, appellees claim that *NAACP v. Alabama, ex rel. Patterson*, 357 U.S. 449 (1958), and *Bates v. Little Rock*, 361 U.S. 516 (1960), which hold that participation in private associations is a protected right, are distinguishable because:

> These cases thus dealt with state interference with the freedom of individuals to form groups to exercise their First Amendment freedom of speech and petition, not state regulation of the internal structure of the group which resulted.

Motion to Affirm at 9.

Appellees apparently believe that although the First Amendment protects the right of an association and its members to have a general membership constituted without state interference, it does not protect the right of an association and its members to have the association's internal bodies constituted without state interference. This attempted distinction between the right to join a private association and the right to structure its internal bodies has no basis in the First Amendment and is squarely contrary to the holding in *Cousins v. Wigoda*, 419 U.S. 447 (1975), that state interference with the composition of a national party nominating convention is subject to First Amendment scrutiny.[3] *Accord, Brotherhood of Railroad Trainmen v. Virginia State Bar*, 377 U.S. 1, 6 (1964) (association has protected right to create internal body to recommend legal counsel). Freedom of association is more than just the freedom to join an association.

Appellees assert that *Kusper v. Pontikes*, 414 U.S. 51 (1973), which holds protected the right to participate in party affairs, is distinguishable because:

> RCW 29.42.020 does not exclude plaintiffs in the present case from participating to the same extent as any other citizen in the affairs of the Democratic Party, nor are plaintiffs excluded from any role in selecting the party's candidates for public office.

Motion to Affirm at 10. The claim that excluding appellants from their duly-elected positions on the party's governing

3. Although *Cousins* involved state regulation of national (as opposed to state) party bodies, that fact is relevant only to the question of whether a compelling state interest justifies such regulation. The regulation, itself, whether attempted by a city, state, or the federal government, creates the same substantial burden on freedom of association. *See* Juris. State. at 14 n.15. Further, *Cousins* cannot be distinguished on the grounds that the principal question involved a nominating convention. The Court explicitly held that the analysis is the same for a post-convention caucus. *See* 419 U.S. at 481 n.3; Juris. State. at 10-11 n.13.

body does not restrict their participation in party affairs lacks any credibility. A more important form of participation in Democratic Party affairs than a seat on its State Committee is difficult to imagine.

Appellants attempt to distinguish *Cousins v. Wigoda*, 419 U.S. 477 (1975), on the grounds that it:

> dealt with the freedom of association as part of freedom of speech, the freedom to advance ideas, create controversy, and choose candidates to attempt to implement those ideas through the government. . . . The State Committee serves none of these functions. . . .

Motion to Affirm at 12. If the freedom to advance ideas and create controversy does not include a right to serve on or choose the representatives on the statewide governing body of a political party—the body that governs the party between conventions and distributes funds to candidates—it is difficult to see what those freedoms involve.

Appellees do not even attempt to distinguish *Fahey v. Darigan*, 405 F. Supp. 1386 (D.R.I. 1975), because it is so directly on point. Rather, they claim it is wrong because it fails to distinguish between the activities of party conventions and party primaries (which appellees recognize are protected) and "internal administrative organizations of political parties" (which appellees imply are not protected). The concept that freedom of association extends only to party debates and candidate selection and does not include a right to organize political parties in the way that will make them the most effective is squarely contrary to established precedent. *See Cousins v. Wigoda*, 419 U.S. 477 (1977); *Ripon Society v. National Republican Party*, 525 F.2d 567, 585 (CADC 1975) (en banc), *cert. denied*, 424 U.S. 933 (1976); *cf. Brotherhood of Railroad Trainmen v. Virginia State Bar*, 377 U.S. 1, 6 (1964)

(association has protected right to create internal body to recommend legal counsel).

Appellees also claim that *Fahey* failed to distinguish between a state's interest in regulating national party activities and a state's interest in regulating state party activities. This contention questions only *Fahey's* ultimate conclusion that Rhode Island had no compelling state interest justifying the regulation of the composition of Democratic Party committees. It does not address the court's prior finding that such regulation imposes a substantial burden on freedom of association which triggers First Amendment scrutiny and the requirement that state interests be examined. *See* 405 F. Supp. at 1398. In the present case, the court below held that RCW 29.42.020 is not subject to *any* First Amendment inquiry into state interest.

Sensing the futility of defending RCW 29.42.020 on the preposterous ground that it does not substantially burden appellants' freedom of association, appellees quote from *Storer v. Brown*, 415 U.S. 724 (1974), *Kusper v. Pontikes, supra*, and *Nader v. Schaffer*, 417 F. Supp. 837 (D. Conn. 1976), *aff'd*, 429 U.S. 989 (1976), for the proposition that a state can have a valid interest in election codes that protect the integrity of the electoral process. However, as established in separate litigation, when the Democratic State Committee nominates candidates or performs other ballot-related functions, the "two votes per county, no more and no less" requirement of RCW 29.42.020 does not apply. *See* Juris State. at 4 n.4; *cf.* Motion to Affirm at 3.

In defense of RCW 29.42.020, appellees argue only that the state's interest in the stability and integrity of its electoral process gives it an interest in ensuring that a state committee exist: "[The statute] insures that each major

political party, having established itself as such, shall have an administrative body between state party conventions . . . [thus] insuring the stability and integrity of the electoral process." Motion to Affirm at 16.

Even assuming that appellees are correct in asserting that Washington has a compelling interest in the existence of a Democratic State Committee, appellees have made no argument and can make no argument that the requirement challenged here, that there be two and only two persons per county on the state committee, is the least restrictive means of satisfying such an interest.[4] A requirement that there be a state committee, or that there be a state committee with *at least* two persons from each county, would serve the interest of stability and whatever state interest exists in ensuring that all areas of the state are represented. The present requirement, effectively mandating that 23 percent of the population control 77 percent of the state committee, is not necessary to meet these interests.

Appellees' final defense of RCW 29.42.020 is a claim that 30 other states regulate the composition of party state committees. Motion to Affirm at 16 n.6. Examination of the statutes cited by appellees reveals, however, that in six of those states the party itself determines the composition of the state committee.[5] Several of these states use precisely "the minimum but no maximum" formula that appellants

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4. A statute that burdens First Amendment rights must not only be justified by a compelling state interest, it must also use the least restrictive means to satisfy that interest. *See, e.g., Kuspar v. Pontikes*, 414 U.S. 51, 58-61 (1973); *American Party of Texas v. White*, 415 U.S. 767, 780-81 (1974).

5. Arkansas (Ark. Stat., 1947, § 3.102); Indiana (Indiana Code 3-1-2-1); Maryland (Michie's Code, Article 33, § 11-2(a)); Nevada (Nev. Rev. Stat., § 293.153); New Hampshire (N.H. Rev. Stat. Annot., ch. 56, § 63); New York (McKinney's Con. Laws of New York Anno., § 2-102(1)).

assert would be a less restrictive means here.[6]

Of the remaining states cited by appellees, twelve mandate a formula based on one-person, one-vote principles.[7] Whatever the ultimate validity of such laws, a state's interest in ensuring equal representation for all persons on party state committees is clearly different than a state's interest, if any, in mandating a state committee composition that results (as here) in gross underrepresentation of persons within the state.

Although appellees' citation of statutes in other jurisdictions is thus misleading, appellants agree that the issue raised here is not confined to Washington law. Twelve states, in addition to Washington, mandate a state committee composition that is not within the control of the party or tied to one-person, one-vote principles.[8] Indeed, the existence of such restrictions in other states is an additional reason for review. Where, as in Washington, the

6. For example, Indiana provides for a state committee made up of two persons per congressional district plus whatever additional members the state committee sees fit to provide, Indiana Code 3-1-2-1. Similarly, Nevada provides for a state committee to be made up as determined by the state party convention with a minimum of one representative from each county, Nev. Rev. Stat., § 293.153, and New Hampshire provides for a state committee made up of all county committeemen, with the number of county committeemen determined by the state convention, N.H. Rev. Stat. Annot. ch. 56, § 63.

7. Arizona (Arizona Rev. Stat., § 16-233); Illinois (Ill. Rev. Stat., § 46-7-8(a)); Iowa (Iowa Code, § 43.111); Louisiana (La. Rev. Stat., § 18:285(1)(a)); Massachusetts (Mass. Gen. Laws, ch. 52, § 1); Michigan (Mich. Stat. Annot., § 6.1597); Mississippi (Miss. Code, § 23-1-3(a)); Missouri (Mo. Rev. Stat., § 115.623); North Dakota (N.D. Century Code Anno., § 16-17-11); Ohio (Baldwin & Page's Ohio Rev. Code, § 3517.03); Tennessee (Official Tenn. Code Annot., § 2-1304); West Virginia (Michie's Code, ch. 3, Art. 1, § 9).

8. California (Election Code, §§ 8660-8675); Colorado (Col. Rev. Stat., § 1-14-108(2)); Idaho (Idaho Code, § 34-504); Kansas (Kan. Stat. Anno., § 25-3804; Montana (Montana Rev. Code, § 23-3403(b)); New Jersey (Rev. Stat. Title 19, ch. 5, § 4); Oregon (Or. Rev. Stat., § 248-075(1)); South Carolina (Code of Laws of S. Carolina, § 7-9-90); South Dakota (S.D. Cod. Laws, § 12-5-16); Vermont (Vt. Stat. Anno., § 17-730); Wyoming (Wy. Stat., § 22-4-110).

state-mandated composition results in badly skewed representation and is directly contrary to the decision and directive of the highest party authority, the existence of a state statute forbidding the party from making its state committee more representative is a gross intrusion on the First Amendment rights of the party and its members and cannot be dismissed as "de minimis" or "historically justified."

CONCLUSION

This case is no mere academic exercise in First Amendment doctrines. The Washington State Democratic Committee governs the Party between conventions. To provide expanded and more equal representation of party members, the 1976 State Democratic Convention added legislative district representatives to the committee. As construed and upheld by the Washington State Supreme Court, RCW 29.42.020 totally bars the party from implementing the convention's mandate.

No justification for RCW 29.42.020 has been offered that could not be met by a less restrictive means. The Washington Supreme Court, however, upheld RCW 29.42.020 on the grounds that its effect on First Amendment rights are so minimal as to require *no* inquiry into state interests or less restrictive means. This holding is clearly contrary to established decisions of this Court and presents a substantial federal question. Probable jurisdiction should be noted and the decision of the Washington Supreme Court summarily reversed.

Respectfully submitted:

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November, 1978

Supreme Court, U. S.
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IN THE

Supreme Court of the United States

October Term, 1978

No. 78-647

KAREN MARCHIORO, *et al.*,
Appellants,

v.

NEALE V. CHANEY, *et al.*,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF WASHINGTON

BRIEF OF APPELLANTS

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TABLE OF CONTENTS

Page

Opinions Below 1

Jurisdiction 1

Constitutional and Statutory Provisions Involved 2

Question Presented 3

Statement of the Case 3

A. The Washington Democratic Party Organization 4

B. The Effects of RCW 29.42.020 6

C. Proceedings Below 7

Summary of Argument 9

Argument 11

I. The First Amendment Protects the Rights of the Washington Democratic Party and Its Members to Organize and Participate in the Party's Internal Governing Bodies 11

A. Freedom of Association Protects the Right of the Washington Democratic Party and Its Members to Determine the Size and Composition of the Democratic State Committee 11

B. Freedom of Association Protects the Rights of Individual Party Members, Duly Elected by the Party to the State Committee, to Participate in the Decisions of That Committee 15

II. RCW 29.42.020 Substantially Burdens Appellants' Rights to Freedom of Association 16

A. RCW 29.42.020 Substantially Burdens the Rights of All Appellants as Democratic Party Members to Control the Size and Composition of the Party State Committee 17

Page

B. RCW 29.42.020 Substantially Burdens the Rights of Appellant Legislative District Representatives to Participate in the Decisions of the State Committee 21

III. RCW 29.42.020 Is Constitutional Only if Necessary to Meet a Compelling State Interest That Cannot Be Satisfied by Less Restrictive Means 23

IV. No State Interest Justifies RCW 29.42.020's Requirement That the Democratic State Committee Be Composed of Only Two Representatives From Each County 24

A. A State Interest in "Stability and Integrity of the Electoral System" Does Not Justify the Challenged Requirement 24

B. A State Interest in "Ensuring That All Areas of the State Are Represented in Its Political Process" Does Not Justify the Challenged Requirement 25

Conclusion 27

TABLE OF AUTHORITIES

Cases

Bates v. Little Rock, 361 U.S. 516 (1960) 12, 16, 19, 22

Board of Education v. Barnette, 319 U.S. 624 (1943) 26

Brotherhood of Railroad Trainmen v. Virginia State Bar, 377 U.S. 1 (1964) 12

Cohen v. California, 403 U.S. 15 (1971) 2

Cousins v. Wigoda, 419 U.S. 477 (1975) ....7, 9, 10, 11, 12, 15, 18, 19, *et seq.*

Cunningham v. Washington State Democratic Comm., Civ. No. C75-901 (W.D. Wash., permanent injunction entered Nov. 28, 1977) 5, 7

Page

Dahnke-Walker Milling Co. v. Bondurant, 257 U.S. 282 (1921) 2

Davis v. Mann, 377 U.S. 678 (1964) 26

Dunn v. Blumstein, 405 U.S. 330 (1972) 10, 23

Fahey v. Darigan, 405 F. Supp. 1386 (D.R.I. 1975) 5, 9, 20-21

Kramer v. Union School District, 395 U.S. 621 (1969).... 23

Kusper v. Pontikes, 414 U.S. 51 (1973) 10, 11-12, 15, 19, 22

Moore v. Ogilvie, 394 U.S. 814 (1969) 26

NAACP v. Alabama ex rel. Patterson, 357 U.S. 449 (1958) 9, 12, 15, 16, 19, 22

NAACP v. Button, 371 U.S. 415 (1963) 12, 23

Ripon Society v. National Republican Party, 525 F.2d 567 (D.C. Cir. 1975), *cert. denied*, 424 U.S. 933 (1976) 14, 21

Seergy v. Kings County Republican County Comm., 459 F.2d 308 (2d Cir. 1972) 5

Shelton v. Tucker, 364 U.S. 479 (1960) 23

Storer v. Brown, 415 U.S. 724 (1974) 16

Sweezy v. New Hampshire, 354 U.S. 234 (1957) 12

Constitutional Provisions

U.S. Const. amend. I .....*passim*

U.S. Const. amend. XIV 1, 2, 7

Wash. Const. art. II, § 15 5

Wash. Const. art. XXXI 7

Page

Statutes

RCW ch. 7.24 1
RCW 29.01.090 6
RCW 29.18.150 5
RCW 29.42.020 ..... *passim*
RCW 29.42.030 7
28 U.S.C. § 1257(2) 2
Wash. Laws of 1909 ch. 82, § 6 6
Wash. Laws of 1927 ch. 200, § 1 6

Miscellaneous

L. Tribe, *American Constitutional Law* 787 (1978) 19
State of Washington, Office of Program Planning and Fiscal Management, *State of Washington Pocket Data Book* (1976) 7, 17

IN THE

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ON APPEAL FROM THE SUPREME COURT OF THE STATE OF WASHINGTON

BRIEF OF APPELLANTS

OPINIONS BELOW

The opinion of the Supreme Court of the State of Washington (J.S. App. A)[1] is reported at 90 Wn.2d 298 and at 582 P.2d 487. The oral opinion of the Superior Court for King County (J.S. App. B) is unreported.

JURISDICTION

This action was brought under the Washington Declaratory Judgment Act, RCW ch. 7.24, seeking, *inter alia*, a declaration that a Washington statute (RCW 29.42.020), as applied, violates the First and Fourteenth Amendments to the United States Constitution. Summary judgment for appellants on this claim was granted by the King County

1. "J.S. App." refers to materials contained in the appendices to the Jurisdictional Statement filed October 17, 1978. Materials contained in the Joint Appendix will be cited as "App."

Superior Court (J.S. App. C) and reversed by the Washington Supreme Court in an opinion filed July 20, 1978 (J.S. App. A).

Appellants filed a notice of appeal in the Washington Supreme Court and in the King County Superior Court on October 13, 1978 (J.S. App. D). This Court noted probable jurisdiction on December 11, 1978.

This Court has jurisdiction of this appeal pursuant to 28 U.S.C. § 1257(2). *Dahnke-Walker Milling Co. v. Bondurant*, 257 U.S. 282 (1921); *Cohen v. California*, 403 U.S. 15 (1971).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the First and Fourteenth Amendments to the United States Constitution and RCW 29.42.020.

The First Amendment provides in pertinent part:

> Congress shall make no law . . . abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

The Fourteenth Amendment provides in pertinent part:

> Section 1. . . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.
>
> . . . .

RCW 29.42.020 provides in pertinent part:[2]

> RCW 29.42.020. State Committee. The state committee of each major political party shall consist of one committeeman and one committeewoman from each county elected by the county committee at its organization meeting.
>
> . . . .

2. The full text of RCW 29.42.020 is reproduced in the Jurisdictional Statement (J.S. App. E). Notes 11 and 14 *infra* discuss provisions of RCW 29.42.020 not challenged or involved here.

QUESTION PRESENTED

Can a state constitutionally deny a political party and its members the right to control the size and geographic composition of the party's state committee?

STATEMENT OF THE CASE

This case challenges the constitutionality of a state statute as applied (i) to prohibit the Washington Democratic Party from implementing its decision as to the size and composition of its state central committee and (ii) to bar individual party members from their seats on that committee. The statute, RCW 29.42.020, requires that the state committee of the Washington Democratic Party be composed of two county representatives from each county, no more, no less, and no one else. The Washington Democratic Party Charter requires that the Democratic State Committee be composed of two representatives from each county plus one representative from each legislative district.

Appellants are members and officers of the Washington State Democratic Party, including four persons elected as legislative district representatives to the state committee pursuant to the charter but refused participation in the committee on the grounds that RCW 29.42.020 forbids it.[3]

3. Appellants Marchioro, Baarsma, and Schroeder are the party chairpersons for the three most populous counties in Washington. Appellants Fithian, Evans, Pierce, and Reid are duly elected legislative district representatives to the state committee who have been refused seats on the basis of the challenged statute. Appellant Fisher is a county representative on the state committee as permitted by the challenged statue.

All appellants challenge the statute as an unconstitutional infringement of their First Amendment rights of freedom of association.

A. The Washington Democratic Party Organization

The Washington State Democratic Party, like party organizations in many states, is a hierarchy containing a number of related party bodies. Under party rules and state law, the state party convention is the supreme party authority.[4] The convention meets every two years, exercises plenary authority over party organization and policies, and elects delegates to National Democratic Party meetings.

Between state conventions, the Democratic State Committee is the statewide party governing body.[5] It meets at least four times each year,[6] exercises the party's policy-making functions,[7] directs the party's administrative apparatus,[8] raises and distributes funds to Democratic candidates,[9] conducts workshops to instruct candidates on effective campaign procedures and organization,[10] and seeks generally to further the party's objectives of influencing

4. Charter of the Democratic Party of Washington, art. V(F)(5) (hereinafter "Charter") (App. 15). The court below explicitly held that the Washington State Democratic Convention is the supreme Washington Democratic Party authority. 90 Wn.2d at 313-14 (J.S. App. A–16-17).

5. Charter art. IV(G)(1) (App. 10).

6. Charter art. IV(G)(5) (App. 11).

7. Charter art. IV(G)(1) (App. 10).

8. Charter art. IV(G)(2) (App. 11).

9. Charter art. IV(G)(1), (2) (App. 10-11); *see* Supplemental Exhibit to Memorandum in Support of Plaintiffs' Motion for Partial Summary Judgment (filed May 31, 1977), (R., 1st Supp., 25) (article by state committee chairman in Washington State Democratic Committee newsletter discussing $40,000 raised and distributed by the state committee to candidates in 1976 and $25,000 raised and distributed in 1977).

10. Charter art. VII(C)(1) (App. 19).

policy and electing its adherents to public office. Insofar as is relevant here, the state committee is purely an internal party governing body.[11]

In 1976 the State Democratic Convention adopted a party charter provision directing that the state committee be composed of two representatives elected from each of the state's 39 counties plus one representative elected from each of the state's 49 legislative districts.[12] Pursuant to this charter provision, a number of persons, including four of appellants, were elected to serve as legislative district representatives on the state committee.

11. Although the state committee on rare occasions performs certain ballot access functions, *see* RCW 29.18.150 and 29.42.020 (filling vacancies on certain party tickets and nominating presidential electors) and Wash. Const. art. II, § 15 (selecting nominees for certain interim legislative positions), when it does so it is constitutionally required to comply with the principle of one-person, one-vote. *See, e.g., Seergy v. Kings County Republican County Comm.*, 459 F.2d 308, 313-14 (2d Cir. 1972); *Fahey v. Darigan*, 405 F. Supp. 1386, 1392 (D.R.I. 1975). The state committee has recognized this and has stipulated to the entry of an injunction ordering that the state committee be:

> enjoined from filling vacancies on the Democratic ticket for any federal or state office to be voted on by the electors of more than one county or selecting Democratic nominees for interim legislative appointments to represent multi-county districts by any method that contravenes the one-person, one-vote rule.

Cunningham v. Washington State Democratic Comm., Civ. No. C75-901 (W.D. Wash., permanent injunction entered Nov. 28, 1977). As a result of this injunction, RCW 29.42.020—which results in gross deviations from one-person, one-vote—has been superseded insofar as applied to the state committee when it performs electoral functions.

Indeed, a requirement that the state committee be apportioned to give less than nine percent of the population control of a majority of the committee is clearly irrelevant to any legitimate state interest in regulating the electoral functions of the committee. As the court below explicitly stated, appellants' attack on RCW 29.42.020 does not involve matters relating to the electoral process. *See Marchioro v. Chaney, supra*, 90 Wn.2d at 312 (J.S. App. A-15). Thus, the issue here is solely the constitutionality of a state statute as applied to regulate purely internal party decisions.

12. Charter, art. IV(G)(4) (App. 11). Prior to 1976, party rule had established the composition of the state committee as two representatives from each county. Affidavit of Karen Marchioro filed April 17, 1977, at ¶ 5 (App. 4).

B. The Effects of RCW 29.42.020

RCW 29.42.020 requires that the state committee of each major political party[13] in Washington be composed of two county representatives elected from each county, no more, no less, and no one else.[14] On the basis of this statute, appellees, the Democratic State Committee and its chairman, refused to seat the duly elected legislative district representatives.

Application of RCW 29.42.020 to bar legislative district representatives from the state committee forces the Democratic Party to accept a state committee with a geographic bias far greater than that allowed by the party charter. Under the composition mandated by RCW 29.42.020, the three most populous counties in the state, containing 52 percent of the state's population, elect less than 8 percent of the members of the state committee, while a majority of the state committee is controlled by counties containing

13. Washington law defines "major political party" as "a political party of which at least one nominee for president, vice-president, United States senator, or a state-wide office received at least five percent of the total vote cast at the last preceding state general election in an even-numbered year . . . ." RCW 29.01.090. Under this definition, the Washington Democratic Party is a "major political party."

14. The requirement of a state committee was originally enacted in 1909. Wash. Laws of 1909 ch. 82, § 6. At that time the required composition was one representative from each county. In 1927 the statute was amended to require two persons from each county. Wash. Laws of 1927, ch. 200, § 1. No change in the required composition of the state committee has been made since 1927. Neither the legislative history of the 1909 and 1927 enactments nor the legislative history of subsequent reenactments gives any indication of the legislature's reasons for the required composition.

Although RCW 29.42.020 contains provisions other than the size and geographic composition requirements challenged here, the Washington Supreme Court has explicitly held that the size and composition requirements are severable from other provisions:

> Thus, although the requirement that committee members . . . be chosen pursuant to a certain formula may be void, the statutory establishment and enumeration of powers would remain, and the committee would not cease to exist or be hindered in any way.

Marchioro v. Chaney, supra, 90 Wn.2d at 302-03 (J.S. App. A–5-6); *cf. Cunningham v. Washington State Democratic Comm., supra* note 11.

The provisions of RCW 29.42.020 that are not directly affected by this suit are the electoral functions discussed *supra* in note 11 (as to which the size and composition requirements are already superseded), provisions regulating the sex of the members and the calling of meetings, and provisions giving the state committee power to call party conventions, to provide for the election of delegates to national conventions (*but cf. Cousins v. Wigoda*, 419 U.S. 477 (1975)), and to "perform all functions inherent in such an organization."

less than 9 percent of the total population.[15] Under the composition mandated by the party charter, by contrast, party members in the three counties containing 52 percent of the population have the right to elect 27 percent of the members of the state committee.[16]

C. Proceedings Below

Following the state committee's decision that RCW 29.42.020 forbids implementation of the party's charter, appellants brought suit in state court against the state committee and its chairman seeking, *inter alia*, a declaratory judgment that RCW 29.42.020, as applied to regulate the composition of the Democratic State Committee, unconstitutionally burdens appellants' First and Fourteenth Amendment rights to freedom of association.[17] Pursuant to state law, the State of Washington was served with a copy of the complaint. (R., 1st Supp., 93) The state has

15. *See* State of Washington, Office of Program Planning and Fiscal Management, *State of Washington Pocket Data Book* 255-58 (1976) (hereinafter *"Washington Pocket Data Book"*); *Marchioro v. Chaney, supra*, 90 Wn.2d at 314-15 (Horowitz, J., dissenting) (J.S. App. A–17-18).

16. *See Washington Pocket Data Book, supra* note 15, at 255-58.

17. Appellants also challenged the requirement of RCW 29.42.020 and .030 that the two persons elected as county delegates be one man and one woman. Appellants argued that this requirement violates the Washington State Equal Rights Amendment, Wash. Const. art. XXXI. The Washington Supreme Court rejected this claim. 90 Wn.2d at 308 (J.S. App. A–11). Appellants do not seek review here of the "one man and one woman" requirements of RCW 29.42.020 and .030.

neither intervened nor filed an *amicus* brief in defense of the statute.

Appellants moved for partial summary judgment, and the Superior Court for King County granted that motion, holding, *inter alia*, that the challenged provision burdens appellants' First Amendment rights to freedom of association, is unsupported by any compelling state interest, and is therefore unconstitutional as applied to the Democratic Party of Washington.[18]

Appellees appealed, and the Supreme Court of Washington reversed the trial court in a 5-4 decision, holding that (i) RCW 29.42.020 requires the party state committee to be composed of two county representatives from each county, no more and no less, (ii) although the charter provisions mandating the composition of the state committee would normally be binding on the state committee, those provisions are overridden by the requirements of RCW 29.42.020, and (iii) RCW 29.42.020 is constitutional because it imposes no substantial burden on appellants' First Amendment rights.[19]

Appellants filed a notice of appeal, and on December 11, 1978, this Court noted probable jurisdiction.

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18. The First Amendment of the United States Constitution, as far as I am concerned, protects the right of political association as well as political expression. This statute purports to control the inner workings of a voluntary political association. It might be proper if there were a compelling interest which was served by the statute, but I find that there is no such compelling state interest in any way as far as this statute is concerned. I do believe that people are entitled to voluntarily associate themselves and make their own rules as far as political parties or other types of association are concerned without state interference. . . .

Oral opinion of the court, June 15, 1977 (J.S. App. B–3); *see also* Order and Judgment (entered July 1, 1977) (J.S. App. C).

19. *See* 90 Wn.2d at 301, 312, 314 (J.S. App. A–4, 15, 17).

SUMMARY OF ARGUMENT

I.

The First Amendment protects the right of the Washington Democratic Party and its members to determine the composition of the party's governing body and protects the rights of duly elected members of that body to participate in its decisions. *Cousins v. Wigoda*, 419 U.S. 477 (1975); *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449 (1958).

II.

RCW 29.42.020's requirement that the Democratic State Committee be composed of two representatives from each county, no more and no less, substantially burdens appellants' rights to freedom of association.

Application of the statute to bar implementation of the Democratic Party's decision to place legislative district representatives on its state committee frustrates the party's effort to establish a more representative governing body for internal party affairs and limits 50 percent of the party members to one-third the state committee representation mandated by the party charter.

Application of the challenged provisions also bars four appellants, duly elected as legislative district representatives, from taking their seats on the Democratic State Committee and participating in its decisions.

These effects substantially burden appellants' First Amendment rights to freedom of association. *NAACP v. Alabama ex rel. Patterson, supra; Fahey v. Darigan*, 405 F. Supp. 1386 (D.R.I. 1975).

III.

A statute, such as RCW 29.42.020, that imposes a substantial burden on First Amendment rights, is unconstitu-

tional unless necessary to satisfy a compelling state interest that cannot be satisfied by a less restrictive means. *Cousins v. Wigoda, supra; Dunn v. Blumstein,* 405 U.S. 330 (1972); *Kusper v. Pontikes,* 414 U.S. 51 (1973).

IV.

No legitimate state interest exists that justifies the challenged size and geographic composition requirements of RCW 29.42.020.

An alleged state interest in stability of the electoral process is not furthered by RCW 29.42.020's requirement that party state committees be composed of no more, no less, and none other than two persons from each county. Any legitimate interest in the existence of a state committee to promote stability of the electoral process is met by the unchallenged, independent requirement that the party maintain a state committee.

An alleged state interest in ensuring geographic representation of all areas on party state committees is not legitimate. Even if it were, that interest could be served by the less restrictive means of a requirement that party state committees be composed of at least one person from each county.

Those portions of RCW 29.42.020 applied to bar the Democratic Party from including legislative district representatives on its state committee and to bar party-authorized officers from serving on that committee cannot be justified by any compelling state interest that could not be satisfied by means far less restrictive than the drastic invasion of freedom of association present here.

ARGUMENT

I. The First Amendment Protects the Rights of the Washington Democratic Party and Its Members to Organize and Participate in the Party's Internal Governing Bodies

Appellants challenge the constitutionality of a statute as applied to prohibit the Washington Democratic Party from implementing its decision as to the size and composition of its state committee and to bar individual party members from their seats on that commitee. Both applications of the statute implicate rights protected by the First Amendment right of freedom of association.

A. *Freedom of Association Protects the Right of the Washington Democratic Party and Its Members to Determine the Size and Composition of the Party State Committee*

That the First Amendment protects the right of the Washington Democratic Party and its members to determine the size and composition of their state committee cannot be seriously questioned.

In *Cousins v. Wigoda,* 419 U.S. 477 (1975), this Court considered an attempt by the State of Illinois to regulate the composition of the National Democratic Party Convention. The Court held unequivocally that the right of political parties to determine the composition of their internal party organs is protected by the First Amendment:

> The National Democratic Party and its adherents enjoy a constitutionally protected right of political association. "There can no longer be any doubt that freedom to associate with others for the common advancement of political beliefs and ideas is a form of 'orderly group activity' protected by the First and Fourteenth Amendments. . . ."

419 U.S. at 487, *quoting Kusper v. Pontikes,* 414 U.S. 51,

56-57 (1973); *see Brotherhood of Railroad Trainmen v. Virginia State Bar*, 377 U.S. 1, 6 (1964) (association has protected right to create internal body to recommend legal counsel).[20]

Appellees have suggested that the First Amendment protects only the right to form or join groups, and not the right to administer those groups in the way that the membership determines will best further their ideals and goals.[21] This theory makes a mockery of the First Amendment. Freedom of association is more than just the right to wear a badge or carry a membership card—those are but the outward trappings of group association.

Freedom of association is the right of the members of a group to express a collective judgment and, equally important, the right to attempt to convince others that the

20. It is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the "liberty" assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech.

NAACP v. Alabama ex rel. Patterson, 357 U.S. 449, 460 (1958); *accord, Cousins v. Wigoda, supra*, 419 U.S. at 487; *Kusper v. Pontikes, supra*, 414 U.S. at 56-57; *NAACP v. Button*, 371 U.S. 415, 430-31 (1963); *Bates v. Little Rock*, 361 U.S. 516, 523 (1960).

> Our form of government is built on the premise that every citizen shall have the right to engage in political expression and association. This right was enshrined in the First Amendment of the Bill of Rights. Exercise of these basic freedoms in America has traditionally been through the media of political associations. Any interference with the freedom of a party is simultaneously an interference with the freedom of its adherents.

Sweezy v. New Hampshire, 354 U.S. 234, 250-51 (1957) (plurality opinion).

21. For example, appellees' Motion to Affirm distinguishes *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449 (1958), and *Bates v. Little Rock*, 361 U.S. 516 (1960), on the grounds that: "Those cases thus dealt with state interference with the freedom of individuals to form groups to exercise their First Amendment freedoms of speech and petition, not state regulation of the internal structure of the groups which resulted." Motion to Affirm at 9.

group's ideals and goals are correct. The essence of a political party is its attempt to influence the thinking of voters and governmental officials so as to make the party's ideals and goals the guiding force in governmental action. In its efforts, the party must decide what actions to take and how best to present its position. The party must decide what will be said and who will say it to the best effect. It must decide which candidates to support by endorsement and which to ignore, which candidates should receive funds raised by the party and which should not. The party must decide what forms of persuasion will make and keep new converts and what encouragement will strengthen the resolve of old stalwarts.

In short, a political party is necessarily more than a charter and a crowd of card-carrying members. A political party is a functioning organization that must make a multitude of day-to-day decisions if it is ever to hope to achieve the goals for which it was organized by its members. The formation of internal party governing bodies to direct the efforts of the party and to make the day-to-day decisions is an integral part of the exercise of freedom of association.

As explained by the Court of Appeals for the District of Columbia in refusing to enjoin the delegate selection formula of the National Republican Convention:

> A party is after all more than a forum for all its adherents' views. It is an organized attempt to see the most important of those views put into practice through control of the levels of government. One party may think that the best way to do this is through a "strictly democratic" majoritarianism. But another may think it can only be done (let us say) by giving the proven party professional a greater voice than the newcomer. Which of these approaches

is the more efficacious we cannot say . . . .

What is important for our purposes is that a party's choice, as among various ways of governing itself, of the one which seems best calculated to strengthen the party and advance its interests, deserves the *protection* of the Constitution. . . . The express constitutional rights of speech and assembly are of slight value indeed if they do not carry with them a concomitant right of political association. Speeches and assemblies are after all not ends in themselves but means to effect change through the political process. If that is so, there must be a right not only to form political associations but to organize and direct them in the way that will make them most effective.

Ripon Society v. National Republican Party, 525 F.2d 567, 585 (D.C. Cir. 1975), *cert. denied*, 424 U.S. 933 (1976) (*en banc*) (opinion for the court of McGowan, J.) (emphasis in the original).[22]

A party's right to determine the composition of its internal governing bodies is particularly important where, as here, the body in question directs all party activities between conventions, makes policy statements and distributes funds to candidates, and generally determines how the party, and its goals, will be perceived by party members and by the public on a day-to-day basis.

Freedom of association plainly protects the right of the Washington Democratic Party and its members to determine the size and composition of their state committee.

---

22. The crucial point is that all these potential decisions—whether to reward the ideological faithful, farmer or urban dweller or whether to encourage electoral success by rewarding those parties which actually carry the ticket—are essentially political accommodations. As such, they are a fundamental exercise of first amendment rights; second-guessing of their accuracy by the judiciary is both impossible and an unwarranted deviation from our constitutional scheme. *Ripon Society, supra*, 525 F.2d at 604 (Tamm, J., concurring in the result).

B. *Freedom of Association Protects the Rights of Individual Party Members, Duly Elected by the Party to the State Committee, to Participate in the Decision of That Committee*

Cousins v. Wigoda, supra, also stands for the proposition that individual party members have First Amendment rights to serve in internal political party positions to which they are elected. The *Cousins* petitioners were fifty-nine persons elected under Democratic Party rules to be delegates to the Democratic National Convention. A state court had enjoined them from participating in the convention and a post-convention caucus. They challenged the injunction on the grounds that it unconstitutionally burdened both their individual First Amendment rights to participate in the convention and the caucus and the First Amendment rights of the party and all party members to have them participate, and this Court sustained their challenge. *See* 419 U.S. at 481 n.3, 482, 488-89; *id.* at 492 (Rehnquist, J., concurring in the result) ("[W]e do not believe that the State's interest is sufficient to support a total restriction on the petitioners' right to assemble, associate with fellow members of a political party, and urge upon the Convention their claim to be seated as delegates."); *accord, Kusper v. Pontikes*, 414 U.S. 51, 58 (1973) (freedom of association protects right of individual party member to associate with party); *see NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 458-59, 462-62 (1958) (freedom of association protects individuals' rights to associate with civil rights group).

Freedom of association plainly protects the rights of the four appellants, duly elected as legislative district representatives to the Democratic State Committee, to take their seats on that committee and to participate in its decisions.

II. RCW 29.42.020 Substantially Burdens Appellants' Rights to Freedom of Association

The challenged statute, RCW 29.42.020, substantially burdens appellants' freedom of association in two significant respects.[23] First, by blocking implementation of the Democratic Party's mandate placing legislative district representatives on its state committee, the statute substantially burdens the rights of all appellants as party members to determine the composition of their party's internal governing body. Second, the statute substantially burdens the associational rights of the four appellants duly elected to the state committee as legislative district representatives by barring them from their seats on that committee.[24]

23. The court below held that it need not engage in First Amendment scrutiny of RCW 29.42.020 because the statute imposes no "substantial burden" on appellants' "right of free association." 90 Wn.2d at 312 (J.S. App. A–15). The court's holding appears to be based on the court's erroneous conclusion that the right of free association protects only against racial discrimination and direct interference with the casting of votes, and does not extend to "other aspects of the political process." *See* 90 Wn.2d at 309 (J.S. App. A–12). As shown in Part I, *supra*, freedom of association is not so limited.

In view of the plain restraints RCW 29.42.020 imposes on the Washington Democratic Party and appellants, it is impossible to hold that freedom of association protects political parties' internal organization and yet conclude, as did the court below, that the statute imposes no substantial burden on appellants' rights of freedom of association.

24. This Court has used several different phrases to indicate when an effect on First Amendment interests is subject to strict scrutiny. *See, e.g., NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 462 (1958) ("substantial restraint"); *Bates v. Little Rock*, 361 U.S. 516, 523 (1960) ("significant interference"); *Storer v. Brown*, 415 U.S. 724, 729 (1974) ("substantial burdens").

Technically speaking, the effects of RCW 29.42.020 are no mere burden, they are an absolute bar and should therefore be characterized in terms of "substantial interference" or "substantial restraint." Nevertheless, because the Washington Supreme Court held that the statute imposes no "substantial burden" on appellants, *see* note 23 *supra*, and because all three terms are generally viewed as connoting the same degree of interference, appellants will refer to the "substantial burden" imposed by RCW 29.42.020.

A. *RCW 29.42.020 Substantially Burdens the Rights of All Appellants as Democratic Party Members to Control the Size and Composition of the Party State Committee*

The Convention of the Democratic Party of Washington, the supreme party authority, has adopted a party charter provision requiring that the state committee be composed of two persons elected from each county plus one person elected from each legislative district. RCW 29.42.020 prevents the party from implementing this decision by requiring that the state committee be composed of two county representatives elected from each county, no more, no less, and none other.

By negating the party's decision to have both county representatives and legislative district representatives on its state committee, RCW 29.42.020 unquestionably imposes a substantial burden on the Democratic Party's right to decide for itself how it shall be governed. The two persons per county statutory formula allows 20 small counties, containing less than nine percent of the population, to elect a majority of the state committee, while Washington's three most populous counties, containing more than 50 percent of the State's population, elect only 8 percent of the state commitee's membership.[25] Under the party charter formula, party members in the three counties containing 50 percent of the population would elect 27 percent of the state committee's membership.[26]

RCW 29.42.020 thus wholly frustrates the party's effort to establish a more representative governing body for in-

25. *See* 90 Wn.2d at 314-15 (J.S. App. A–17-18) (Horowitz, J., dissenting); *Washington Pocket Data Book, supra* note 15, at 255-58.

26. *See Washington Pocket Data Book, supra* note 15, at 255-58.

ternal party matters.[27] The statute forces the Democratic Party to be governed by a state committee controlled by a minority of party members from primarily rural counties[28] and limits 50 percent of the party members to one-third the voting power mandated by the party charter.[29]

These effects of RCW 29.42.020—barring implementation of the Democratic Party's charter, frustrating the party's decision as to the composition and constituency of its state committee, and altering the weight of individual party members' votes from that set by the party—all substantially burden the First Amendment rights of the party and appellant party members.

Cousins v. Wigoda, 419 U.S. 477 (1975), is directly on point. In *Cousins*, an Illinois court enjoined the seating of certain persons (the "Cousins delegates") at the National Democratic Party Convention on the ground that Illinois

27. The Party Charter, art. VI provides, in pertinent part:

> Basic Principles
>
> A. Open Party
>
> . . . .
>
> 2. *All members of the Party shall enjoy equal rights, protection and opportunities* in all governing documents and *in all proceedings of the party at all levels.*
>
> . . . .
>
> C. Fair Representation
>
> 1. *In elections at all levels of the Party in which policy is determined or in which delegates, officers, other Party officials, and nominees for public officials are to be selected, procedures shall:*
>
> a. Provide full, equal, timely participation;
>
> b. *Assure fair, proportional representation of preferences* . . .

Charter, art. VI (App. 15-17) (emphasis added).

28. "[T]he vote of one Democrat in Garfield County has an influence in the state committee equal to the votes of nearly 400 Democrats in King County." 90 Wn.2d at 318 (J.S. App. A–21) (Horowitz, J., dissenting).

29. Nor is the statute's interference with the constituency of the state committee limited to its imposition of minority dominance. RCW 29.42.020, by forbidding the seating of legislative district representatives, also prevents groups who have district-wide support but not county-wide support from making their voices heard.

law governed the composition of the Illinois delegation and prohibited the seating of the Cousins delegates. The Cousins delegates challenged this injunction, arguing that the Democratic Party had determined that they should participate in the Convention and that the action of the Illinois court burdened, *inter-alia*, the right of the National Democratic Party and its members to freedom of association. *See* 419 U.S. at 482. This Court agreed. *See* 419 U.S. at 487 ("The National Democratic Party and its adherents enjoy a constitutionally protected right of political association."). This Court concluded that Illinois' interference with the composition of the Democratic Party convention could be constitutional only if justified by a compelling state interest and that Illinois had no such interest. *See* 419 U.S. at 487, 489-91.

Cousins v. Wigoda stands squarely for the proposition that state interference with the composition of internal political party organs imposes a substantial burden on the associational rights of the party and its members and can be justified only by a compelling state interest.[30] As stated

30. *Cousins'* holding on "substantial burden" cannot be distinguished because it involved state regulation of a national political party rather than the state regulation of a state political party present here.

The test of whether state law substantially burdens associational rights is the same whether the association involved is a neighborhood civil rights group or a party caucus or a national convention. *Compare Kusper v. Pontikes*, 414 U.S. 51 (1973) (treating equally burden on local, state, and national party association), *Bates v. Little Rock*, 361 U.S. 516 (1960) (burden on membership in local branch of NAACP), and *NAACP v. Alabama*, 357 U.S. 449 (1958) (burden on state NAACP membership), *with Cousins v. Wigoda*, 419 U.S. 447 (1975) (burden on participation in party caucus and national party convention).

The fact that a state regulates national, as opposed to state, parties is relevant *only* to the question whether a compelling state interest exists to justify such regulation. *See* L. Tribe, *American Constitutional Law* 787 (1978). The question whether any compelling state interest justifies RCW 29.42.020's substantial burden on appellants' associational rights is addressed in Part IV *infra*.

by Mr. Justice Rehnquist:

> The operation of the injunction issued by the Illinois Circuit Court in this case was as direct and severe an infringement of the right of association as can be conceived.

Id. at 491-92 (Rehnquist, J., concurring in the result).

In *Fahey v. Darigan*, 405 F. Supp. 1386 (D.R.I. 1975), the district court for Rhode Island applied *Cousins* to a situation very similar to that presented here. For many years the Rhode Island Democratic Party had fixed at 11 the size of Democratic ward committees in the City of Providence. In 1975 the Rhode Island legislature enacted a statute requiring that these committees be composed of 19 persons. Two Democratic Party members challenged the statute on the ground that the legislation unconstitutionally burdened their First Amendment right to conduct internal party affairs without unjustified state interference. 405 F. Supp. at 1394-96. Unlike the present case, the statute in *Fahey* did not alter the constituency of the ward committees or the weight of each party member's vote in selecting the membership of those committees. The court stated, nevertheless, that:

> We should not lightly dismiss, as *de minimis*, a party's choice of organizational structure even though the state interference at issue involves a mechanically applied, numerical or formal requirement.

405 F. Supp. at 1397. The court concluded:

> [T]he state intrusion at issue, which governs internal political party structure and not access to the state ballot, *imposes a substantial burden upon plaintiffs' associational rights* and is therefore subject to strict judicial scrutiny.

Id. at 1398 (emphasis added).[31]

The requirement of the Washington Democratic Party Charter that the state committee be composed of two persons per county plus one from each legislative district is the "party's choice, as among various ways of governing itself, of the one which seems best calculated to strengthen the party and advance its interests." *Ripon Society, supra*, 525 F.2d at 585. RCW 29.42.020 prohibits implementation of this choice, prevents the party from reducing the state-ordered disparity in voting strengths as among party members, and, as a practical matter, vests control of the state committee in rural groups with county-wide support. The decisions of this Court and of lower federal courts establish that this state interference with the party's choice of internal self-government constitutes a substantial burden on the First Amendment associational rights of the party and of all party members.

B. *RCW 29.42.020 Substantially Burdens the Rights of Appellant Legislative District Representatives to Participate in the Decisions of the State Committee*

The effects of RCW 29.42.020 are felt not only by all appellants as party members, but also by the four appellants duly elected as legislative district representatives to

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31. "Last term the Court in *Cousins* v. *Wigoda* placed the internal workings of a political party squarely within the protection of the First Amendment . . . . If First Amendment rights are exercised when a Party determines the make-up, or perhaps even the existence, of state delegations, we think the same is true when it determines their size."

405 F. Supp. at 1398, quoting *Ripon Society, Inc. v. National Republican Party*, 525 F.2d 567, 586 (D.C. Cir. 1975) (*en banc*), *cert. denied*, 424 U.S. 933 (1976).

the state committee. RCW 29.42.020 bars these four appellants from serving in their party authorized roles as voting members of that committee.

Decisions of this Court firmly establish that individuals have First Amendment rights to participate in party affairs and that governmental action barring or even discouraging such participation substantially burdens the individual's rights of freedom of association.

In *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449 (1958), the NAACP asserted both its rights and the individual rights of its members in challenging a statute requiring disclosure of the members' names. This Court considered only the rights of the members, *see* 357 U.S. at 458-59, and held that the likelihood that disclosure would induce individuals to withdraw their participation or to forego becoming members constituted a "substantial restraint" on the rights of those individuals to associate freely. 357 U.S. at 462-63; *accord, Kusper v. Pontikes*, 414 U.S. 51, 58 (1973) (state restrictions on voting in party primaries "substantially abridged" individual party member's right to associate with party); *Bates v. Little Rock*, 361 U.S. 516, 523-24 (1960) (disclosure of membership lists likely to work "significant interference" with members' freedom of association); *see Cousins v. Wigoda, supra* (rights of individual delegates to participate in the National Democratic Convention can be denied only if necessary to serve a compelling state interest).

The challenged statute bars four individual appellants from participating in the Democratic State Committee to which they were duly elected under the party's mandate. Under the decisions of this Court, the statute substantially burdens these appellants' First Amendment rights to freedom of association.

III. RCW 29.42.020 Is Constitutional Only if Necessary to Meet a Compelling State Interest That Cannot Be Satisfied by Less Restrictive Means

RCW 29.42.020 imposes substantial burdens on appellants' First Amendment rights to freedom of association. The statute can withstand constitutional scrutiny only if justified by a compelling state interest. As this Court held in *Cousins v. Wigoda, supra:*

> Even though legitimate, the " 'subordinating interest of the State must be compelling' . . ." to justify the injunction's abridgment of the exercise by petitioners and the National Democratic Party of their constitutionally protected rights of association. *NAACP v. Alabama*, 357 U.S. 449, 463 (1958).

419 U.S. at 489; *accord, Dunn v. Blumstein*, 405 U.S. 330, 337 (1972); *Kramer v. Union School District*, 395 U.S. 621, 627 (1969).

Even a legitimate state interest compelling enough to justify substantial interference with First Amendment rights cannot justify a statute if the interest can be satisfied by a less restrictive means.

> For even when pursuing a legitimate interest, a State may not choose means that unnecessarily restrict constitutionally protected liberty. Dunn v. Blumstein, 405 U.S. at 343. "Precision of regulation must be the touchstone in an area so closely touching our most precious freedoms." NAACP v. Button, 371 U.S. at 438. If the State has open to it a less drastic way of satisfying its legitimate interests, it may not choose a legislative scheme that broadly stifles the exercise of fundamental personal liberties.

Kusper v. Pontikes, 414 U.S. 51, 59 (1973); *accord, Dunn v. Blumstein, supra*, at 343 (1972); *NAACP v. Button*, 371 U.S. 415, 438 (1963); *Shelton v. Tucker*, 364 U.S. 479, 488 (1960).

RCW 29.42.020's substantial interference with the Washington Democratic Party's internal organization and with

appellants' participation in party affairs can be sustained only if justified by a compelling state interest that cannot be satisfied by a less restrictive means.

IV. No State Interest Justifies RCW 29.42.020's Requirement That the Democratic State Committee Be Composed of Only Two Representatives From Each County

The challenged provisions of RCW 29.42.020 require that the state committee of the Washington Democratic Party be composed of no more, no less, and none other than two county representatives elected from each county. The challenged provisions are defended as necessary (1) to ensure "stability and integrity of the electoral process"[32] and (2) to ensure "that all areas of the state are represented in its political process."[33] Neither alleged interest, even if legitimate, justifies the substantial burden RCW 29.42.020 imposes on the Washington Democratic Party's right to internal self-government and on appellants' rights to participation in party affairs.

A. *A State Interest in "Stability and Integrity of the Electoral System" Does Not Justify the Challenged Requirements*

Appellees have argued that the state has a compelling interest in ensuring that each major political party has an administrative body between conventions, because the existence of such committees is allegedly necessary to ensure the stability and integrity of the electoral process.[34]

32. Appellees' Motion to Affirm at 16; Brief of Appellants (appellees here) at 41-43 (Wash. Sup. Ct., filed Sept. 16, 1977) (hereinafter "Appellees' Wash. Sup. Ct. Br.").

33. Appellees' Wash. Sup. Ct. Br., *supra* note 32, at 43-44.

34. *See* note 32 *supra*.

Appellants question whether party state committees are in fact essential to the stable functioning of state electoral systems. Even assuming, however, that the existence or even "stability" of party state committees is essential to further a compelling state interest in stability of the electoral process, this interest does not justify the requirement of two representatives from each county, no more and no less, on the state committee. Any need for existence or "stability" of the state committee is served by a simple requirement that the party maintain a state committee. As the court below explicitly held, a ruling upholding appellants' challenge to RCW 29.42.020's size and geographic composition requirements will not affect the independent requirement that the Washington Democratic Party maintain a state committee. *Marchioro v. Chaney, supra,* 90 Wn.2d at 302-03 (J.S. App. A—5-6).

RCW 29.42.020's rigid requirement that the state committee be composed of two county representatives from each county, and no one else, cannot be defended as a precisely tailored regulation necessary to ensure stability of the electoral process. Indeed, the only conceivable purpose of this rigid requirement is to ensure representation of all geographic areas on the state committee.

B. *A State Interest in "Ensuring That All Areas of the State Are Represented in Its Political Process" Does Not Justify the Challenged Requirements*

Appellees have argued that the Democratic Party's state committee must be made up of two persons from each county to satisfy a state interest in ensuring that all geographic areas of the state are represented on the state committee.[35] Contrary to appellees' assertions, the state

35. *See* note 33 *supra*.

has no legitimate interest in requiring that the internal governing body of a political party represent all geographic areas of the state. *See generally Moore v. Ogilvie,* 394 U.S. 814, 818-819 (1969); *Davis v. Mann,* 377 U.S. 678 (1964).

The only purpose for ensuring that all geographic areas are represented on the Democratic State Committee is to ensure representation within the Democratic Party of the various political interests that are identified with the different geographic areas. This is nothing more than an attempt to prescribe official orthodoxy in Democratic Party politics. RCW 29.42.020's requirement that all geographic areas be represented on the Democratic State Committee is no more legitimate than would be a state requirement that the committee contain at least one aerospace worker, one wheat farmer, one urban resident, one liberal, and one conservative.

> [I]f there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion. . . .

Board of Education v. Barnette, 319 U.S. 624, 642 (1943).

Even assuming that the state did have a legitimate interest in requiring that the state committee represent the political interests of all geographic areas, RCW 29.42.020 would be an excessively restrictive means of achieving that goal. Representation of all areas could be achieved, for example, by requiring that the state committee contain *at least* one person from each county, with the party left free to determine what additional persons should be added.

No state interest in geographic diversity justifies requiring, in the face of a contrary party mandate, that the Democratic State Committee be constituted such that the

political interests of rural counties containing less than nine percent of the population control a majority of the votes, and counties containing a majority of the population receive only eight percent of the votes.

CONCLUSION

RCW 29.42.020 substantially burdens the First Amendment rights of appellant party members and officers to organize and participate in the Democratic State Committee. Neither an alleged state interest in ensuring stability of the electoral process nor an alleged state interest in ensuring representation of all geographic areas on internal party bodies justifies this statute's drastic interference with appellants' rights to freedom of association.

The judgment of the Washington Supreme Court holding constitutional the size and geographic composition requirements of RCW 29.42.020 as applied to the Democratic Party of Washington should be reversed.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-647

KAREN MARCHIORO, ET AL.,
Appellants,

v.

NEALE V. CHANEY, ET AL.,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF WASHINGTON

BRIEF OF APPELLEES

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SUBJECT INDEX

Page

Constitutional and Statutory Provisions Involved 1

Question Presented 2

Statement of The Case 3

A. Parties 3

B. Democratic Party of Washington 3

C. The State Committee 5

D. Proceedings Below 7

Summary of Argument 9

Argument 10

I. RCW 29.42.020, Which Sets the Size and Membership of the State Committee, Does Not Substantially Burden the Appellants' First Amendment Rights 10

A. Appellants Have No Right Under the Freedom of Association to Determine the Size and Composition of the State Committee of the Democratic Party of Washington 11

B. Appellants Have Not Shown That RCW 29.42.020 Substantially Burdens Their Right to Undertake or Participate In Group Activity For the Advocacy and Advancement of Ideas Which Is Protected by the Freedom of Association 19

C. RCW 29.42.020 Does Not Substantially Burden Any Rights of the Legislative District Representatives to Participate In the Decisions of the State Committee 22

II. Assuming Arguendo that RCW 29.42.020 Substantially Burdens Appellants' First Amendment Rights, the Statute Serves a Compelling State Interest 23

A. RCW 29.42.020 Is Reasonably Related to Legitimate State Interests 23

Page

B. RCW 29.42.020 Serves Compelling State Interests of the State of Washington 24

C. RCW 29.42.020 Is Sufficiently Narrowly Drawn So As Not to Unnecessarily Restrict Appellants' Rights Under the First Amendment 29

Conclusion 30

TABLES OF AUTHORITY

Table of Cases

Affeldt v. Whitcomb, 319 F. Supp. 69 (N.D. Ind. 1970), *affirmed*, 405 U.S. 1034 (1972) 25

American Party of Texas v. White, 415 U.S. 767 (1974) 19

Bates v. Little Rock, 361 U.S. 516 (1960) 11, 12, 18

Brotherhood of Railroad Trainmen v. Virginia State Bar, 377 U.S. 1 (1964) 12-13

Buckley v. Valeo, 424 U.S. 1 (1976) 18

Cousins v. Wigoda, 419 U.S. 477 (1975) 14, 15, 17, 18, 27-28

Dahl v. Republican State Committee, 319 F. Supp. 682 (W.D. Wash. 1970) 5

Fahey v. Darigan, 405 F. Supp. 1386 (D. R.I. 1975) 16, 17, 18, 27, 28

King County Republican Central Committee v. Republican State Committee, 79 Wn.2d 202 (1971) 4, 5, 20

King v. Willis, 333 F. Supp. 670 (D. Del. 1971) 25, 26

Kusper v. Pontikes, 414 U.S. 51 (1973) 13, 14, 18, 24

Montano v. Lefkowitz, 575 F.2d 378 (2d Cir. 1978) 17

NAACP v. Alabama ex rel. Patterson, 357 U.S. 449 (1958) 11-12, 18

Nader v. Schaffer, 417 F. Supp. 837 (D. Conn.), *affirmed*, 429 U.S. 989 (1976) 24, 25

Raza Unida Party v. Bullock, 349 F. Supp. 1272 (W.D. Tex. 1972), *affirmed in part, vacated in part*, 415 U.S. 767 (1974) 25

Page

Ripon Society v. National Republican Party, 525 F.2d 567 (D.C. Cir. 1975), *cert. denied*, 424 U.S. 933 (1976) 16, 17, 18

Runyon v. McCrary, 427 U.S. 160 (1976) 15, 16, 19

Storer v. Brown, 415 U.S. 724 (1974) 18, 23-24, 25

Tansley v. Grasso, 315 F. Supp. 513 (D. Conn. 1970) 24, 25

United States v. Brown, 381 U.S. 437 (1965) 15, 19

Constitutional Provisions

U.S. Cont. amend. I .....1, 8, 9, 10, 11, 12, *et seq.*

U.S. Const. amend. XIV 1, 5

Statutes

Arizona Rev. Stat. § 16-233 26

Ark. Stat., 1947, § 3.102 26

Baldwin & Page's Ohio Rev. Code § 3517.03 27

Calif. Election Code §§ 8660-8675 26

Code of Laws of S. Carolina § 7-9-90 27

Col. Rev. Stat. § 1-14-108(2) 26

Idaho Code § 34-504 26

Ill. Rev. Stat. § 46-7-8(a) 26

Indiana Code § 3-1-2-1 26

Iowa Code § 43.111 26

Kan. Stat. Anno. § 25-3804 26

La. Rev. Stat. § 18:285(1)(a) 26

Laws of 1909, Ch. 82 § 6 7

Laws of 1927, Ch. 200 § 1 7

Md. Michie's Code, Art. 33, § 1102(a)(1), *et seq.* 26

Mass. Gen. Laws, Ch. 52, § 1 26

McKinney's Con. Laws of New York Anno. § 2-102(1) 27

Mich. Stat. Anno. § 6.1597 26-27

Miss. Code. § 23-2-3(a) 27

Mo. Rev. Stat. § 115.623 27

Montana Rev. Code § 23-34-3(b) 27

	Page
N.D. Century Code Anno. § 16-17-11	27
Nev. Rev. Stat. § 293.153	27
N.H. Rev. Stat. Anno., Ch. 56, § 63	27
N.J. Rev. Stat., Title 19, Ch. 5, § 4	27
Official Tenn. Code Anno. § 2-1304	27
Or. Rev. Stat. § 248.075(1)	27
S.D. Cod. Laws § 12-5-16	27
Vt. Stat. Anno. § 17-730	27
W.V. Michie's Code, Ch. 3, Art. 1, § 9	27
Wy. Stat. § 22-4-110	27
RCW 23A.08.340-.410	15
RCW 23A.08.350	15
RCW 23A.08.360	15
RCW 29.01.090	3
RCW 29.18.200	21
RCW Ch. 29.42	3
RCW 29.42.020	1-2, 5, 7, 8, 9, 10, *et seq.*
RCW 29.42.020-.070	3
RCW 29.42.030	3, 29
RCW 29.42.040-.060	4
RCW 29.42.070	4
12 U.S.C. § 78	15
29 U.S.C. § 504	15
42 U.S.C. § 1981	15

Other Authority

H.B. 507, 42nd Leg. (1971)	9
H.B. 747, 43rd Leg. (1973)	9
H.B. 545, 44th Leg. (1975)	9
H.B. 152, 45th Leg. (1977)	9
H.B. 598, 45th Leg. (1977)	9
H.B. 850, 45th Leg. (1977)	9
S.B. 2481, 45th Leg. (1977)	9

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BRIEF OF APPELLEES

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the First and Fourteenth Amendments to the United States Constitution and RCW 29.42.020.

The First and Fourteenth Amendments are set forth in the Brief of Appellants (hereinafter "Br.A."). RCW 29.42.020 states:

> *State Committee.* The state committee of each major political party shall consist of one committeeman and one committeewoman from each county elected by the county committee at its organization meeting. It shall have a chairman and vice-chairman who must be of opposite sexes. This committee shall meet during

January of each odd-numbered year for the purpose of organization at a time and place designated by a sufficient notice to all the newly elected state committeemen and committeewomen by the authorized officers of the retiring committee. For the purpose of this section a notice mailed at least one week prior to the date of the meeting shall constitute sufficient notice. At its organizational meeting it shall elect its chairman and vice-chairman, and such officers as its bylaws may provide, and adopt bylaws, rules and regulations. It shall have power to:

(1) Call conventions at such time and place and under such circumstances and for such purposes as the call to convention shall designate. The manner, number and procedure for selection of state convention delegates shall be subject to the committee's rules and regulations duly adopted;

(2) Provide for the election of delegates to national conventions;

(3) Fill vacancies on the ticket for any federal or state office to be voted on by the electors of more than one county;

(4) Provide for the nomination of presidential electors; and

(5) Perform all functions inherent in such an organization.

Notwithstanding any provision of this 1972 amendatory act, the committee shall not set rules which shall govern the conduct of the actual proceedings at a party state convention.

QUESTION PRESENTED

Is a state statute under which the membership of the Washington State Democratic Committee (hereinafter the "State Committee") is set at two members from each county unconstitutional?

STATEMENT OF THE CASE

A. Parties

Appellants consist of eight individuals. At the time this case came before the trial court, three of the appellants were chairmen of county central committees of the Democratic Party of Washington; two of the three presently hold those positions. Before the trial court, four other appellants claimed to be elected representatives to the State Committee from Washington Democratic legislative district organizations; only two presently retain these positions. Before the trial court, the eighth appellant was a member of the State Committee; she no longer holds that position. All appellants allege they are "members" of the Democratic Party of Washington.

Appellee Neale V. Chaney, was, at the time the suit was filed, chairman of the State Committee. Chaney left that position in August 1978, and is no longer associated with the State Committee. The other appellee is the State Committee itself, whose function is discussed below.

B. Democratic Party of Washington

The Democratic Party of Washington is classified by state statute as a "major political party." RCW 29.01.090.[1] As such, the party is subject to the provisions of RCW Ch. 29.42, Political Parties.

RCW 29.42.020-29.42.070 set out the structure to be met by major political parties. These statutes detail the organization, functions and requirements of the State Committee (.020), the county central committees (.030), pre-

1. "'Major political party' means a political party of which at least one nominee for president, vice-president, United States Senator, or a state-wide office received at least five percent (5%) of the total vote cast at the last preceding state general election in an even-numbered year . . ."

cinct committeemen (.040-.060), and legislative district chairmen (.070). The responsibilities of some of these groups and individuals have, however, been supplemented by the Charter of the Democratic Party of Washington (hereinafter "Charter"). See Article IV., Appendix (hereinafter "App."), 8-13.

As a major party under the statutes, the Democratic Party of Washington has certain powers:

> As an existing and acknowledged major political party it is, even absent statutory authorization, endowed with inherent powers of self-regulation toward the ends of establishing party policy, conducting conventions, endorsing candidates, managing campaigns, raising funds, enlisting members, electing organizational officers, and creating committees.

King County Republican Central Committee v. Republican State Committee, 79 Wn.2d 202, 210-211 (1971).

Furthermore, the Supreme Court of the State of Washington has stated in two different cases that:

> The state convention of a major political party is the ultimate respository of statewide party authority . . . . And, *subject to the intervention of applicable statutory or constitutional provisions*, the state convention is implicitly empowered to establish the permanent state organization of the party, create committees, delegate authority, and promulgate, adopt, ratify, amend, repeal or enforce intraparty statewide rules and regulations.

Ibid., 79 Wn.2d at 211-212. (Emphasis supplied). *See also, Marchioro v. Chaney*, 90 Wn.2d 298, 313 (1978).

Thus, the State of Washington has enacted a regulatory scheme with which major political parties, including the Democratic Party of Washington, must comply, and pursuant to which major political parties, including the Democratic Party of Washington, are to be structured.

C. The State Committee

The statutory organization, functions and duties of the State Committee are set forth in RCW 29.42.020. These were further delineated in the *King County Republican* case.

> Representative of a permanent state party organization, though subordinate to the overriding power of the party's state convention, is a state committee created by RCW 29.42.020. As a committee designed to function on a statewide level, it is necessarily invested with the inherent power to adopt rules and regulations for its own internal government, as well as to promulgate, subject to the overriding authority of the state convention, intraparty rules governing statewide operations of the party as a political organization during the interval between conventions.

79 Wn.2d at 212.

The functions of the State Committee were considered in *Dahl v. Republican State Committee*, 319 F. Supp. 682 (W.D. Wash. 1970), in which the State Committee was a named defendant.[2] The district court characterized the State Committee in the following terms:

> [T]he functions performed by the state and county committees are *primarily administrative in nature* and concern themselves almost exclusively with the internal affairs of the political parties.

319 F. Supp. at 685. (Emphasis supplied).

On pages 4-5 of their brief, appellants purport to describe the functions of the State Committee. This descrip-

2. In *Dahl*, RCW 29.42.020 was challenged on the grounds that it violated the Equal Protection clause of the Fourteenth Amendment. The district court rejected the contention, holding that there was no requirement under the Fourteenth Amendment that the State Committee be apportioned on the basis of population. 319 F. Supp. at 684, 685.

tion is taken, however, not from state law, but from the powers delegated to the State Committee by the Democratic Party of Washington, either specifically, as by the Charter or party rule, or by tradition. This is true, for instance, as to the raising and distribution of funds by the State Committee.[3] As another example, there is no indication in the record that the State Committee conducted workshops to instruct candidates on effective campaign procedures and organization until the Charter delegated that function. Charter, Art. VII(C)(1), App. 19.

In their description, appellants claim that the State Committee "exercises the Party's policy-making functions." Br. A., 4. What appellants mean by this is not clear, and their reference to the Charter, Art. IV(G)(1), App. 10, is of no assistance since there is no mention there of policy-making. To the extent, however, that policy-making includes the creation and determination of the position of the Democratic Party of Washington on political issues and public affairs, Washington law does not delegate that function to the State Committee, and there is nothing in the record showing that the State Committee has, in fact, engaged in this activity. *Furthermore, the State Committee denies that this "policy-making" is one of its functions under state law.*

According to appellants, the State Committee "directs the Party's administrative apparatus." Br.A., 4. Under state

3. While the State Committee has raised and distributed some money, the amounts have been small, and have gone to the administration of the State Committee, payment of debts, and distribution to Democratic Party candidates nominated to run for office. Record (hereinafter "R."), Supplemental Exhibit, 27.

law, this is the duty of the State Committee, subject to the overriding power of the state convention. 79 Wn.2d at 212.

RCW 29.42.020 is part of a continuous line of Washington statutes creating and regulating the state committees of major state political parties. The first, enacted in 1909, set the composition of the State Committee at one member from each county committee. Laws of 1909, Chap. 82, § 6, p. 175. In 1927, the membership was changed to one committeeman and one committeewoman from each county. Laws of 1927, Chap. 200, § 1, p. 287. Consequently, the statutory scheme attacked by the appellants is seventy years old.

D. Proceedings Below

In 1976, the Washington State Democratic Convention adopted the Charter. Art. IV(G)(4) of the Charter provides:

> The State Democratic Committee membership shall be organized according to state law; however, in addition to having two (2) delegates per county as voting members, each legislative district shall elect one (1) voting member. Each district representative shall be allowed to vote on all matters or issues, policies and goals which would reasonably fall within the function of the State Convention and as allowed by state law.

App. 11.

This change in the composition of the State Committee from that mandated by RCW 29.42.020 has not been implemented by the State Committee. In the first place, not all legislative district representatives have been elected, and it has been the constant position of the State Committee that no legislative district representatives shall be

seated until all have been elected. Aff. of Neale V. Chaney, ¶ 5, R., 69. Furthermore, the State Committee's position is that the seating of the legislative district representatives will be a violation of state statute, a situation the State Committee understandably wishes to avoid.[4]

Appellants filed this suit in the Superior Court of King County, Washington, requesting, *inter alia*, declaratory relief that RCW 29.42.020 was unconstitutional, that the State Committee must be operated in accordance with the Charter, and that those appellants who were validly elected legislative district representatives were to be seated before the State Committee could transact any business. The superior court held that RCW 29.42.020 unconstitutionally violated appellants' First Amendment freedom of association, but did not order the seating of the legislative district representatives. Order and Judgment, Appendix to Jurisdictional Statement (hereinafter J.S.App.), p. C-3. The Supreme Court of the State of Washington reversed the superior court's finding of unconstitutionality, on the grounds that appellants had failed to show that RCW 29.42.020 substantially burdened appellants' right of free association. 90 Wn.2d at 310-312, J.S.App., A-13-15. The court further found that the Charter was binding on the State Committee, except for Article IV(G)(4), which conflicted with RCW 29.42.020. 90 Wn.2d at 314, J.S.App., A-17.

4. Resistance to the seating of the legislative representatives is also mandated by the Charter. Art. VIII(A) provides as follows:

> This Charter is intended to conform to state and federal statutes and to applicable parts of the Charter of the Democratic Party of the United States. If parts of this Charter are found to be in conflict with such statutes or the National Charter, the applicable statute or provision of the National Charter shall govern.

App. 19.

Appellants have never presented this controversy to the National Democratic Party, or its national committee, in any fashion. However, this controversy has often been considered by the Washington state legislature, which has refused to enact the change for which appellants are pressing. These refusals have occurred even though from 1970 to 1978, with the exception of 1970-1972 when the Republican Party controlled the House of Representatives, the legislature has been controlled by the Democratic Party of Washington. The state legislature is, of course, apportioned on the basis of population.[5]

SUMMARY OF ARGUMENT

I.

Freedom of association is part of the freedoms of speech and assembly under the First Amendment. As such, it protects group activity involved in the advocacy and advancement of ideas and beliefs.

Because RCW 29.42.020, which sets the size and composition of the State Committee, does not substantially burden the Democratic Party of Washington in the advocacy and advancement of its beliefs and ideas, it does not substantially burden appellants' rights under the First Amendment.

5. Relevant bills include H.B. 152, 45th Leg. (1977) (added legislative district representatives and deleted sexual classifications); H.B. 598, 45th Leg. (1977) (removed provisions defining composition and gender of committee); H.B. 850, 45th Leg. (1977) (removed gender provisions and allowed parties to add legislative district representatives); S.B. 2481, 45th Leg. (1977) (similar to H.B. 152, *supra*); H.B. 545, 44th Leg. (1975) (similar to H.B. 152, *supra*); H.B. 747, 43rd Leg. (1973) (added legislative district representatives); and H.B. 507, 42nd Leg. (1971) (substituted legislative district representatives for county representatives). None of these bills left committee.

II.

RCW 29.42.020 is reasonably related to the State of Washington's interests in the operation of its electoral system, and its interest in the integrity and stability of its electoral process, and thus is not unconstitutional.

Assuming *arguendo* that RCW 29.42.020 substantially burdens appellants' First Amendment rights, the statute serves the State of Washington's compelling state interests in an orderly and stable electoral process and political system, in the integrity, stability and responsibility of major political parties, and in having state committees behind and as part of political parties.

Because the membership of the State Committee coincides with the governmental structure responsible for the administration of the state electoral process, the statute is drawn sufficiently narrowly to accomplish its purpose without unnecessarily infringing on protected First Amendment rights.

ARGUMENT

I. RCW 29.42.020, Which Sets the Size and Membership of the State Committee, Does Not Substantially Burden the Appellants' First Amendment Rights

Appellants claim that a state statute which sets the size and membership of the State Committee substantially burdens their right to have implemented the decision of the Democratic Party of Washington as to the size and composition of its State Committee, and the right of individual party members to be seated on the State Committee. Because no such rights exist under the First Amendment freedom of association, appellants show no substantial burdens on protected First Amendment rights.

A. *Appellants Have No Right Under the Freedom of Association to Determine the Size and Composition of The State Committee of the Democratic Party of Washington*

In their attempts to bring this case within the First Amendment, appellants claim a right to determine the size and composition of the State Committee (Br.A., 11).

This Court has considered the freedom of association several times. Other courts have also considered this First Amendment freedom. Appellants' contention finds virtually no support in these cases.

The freedom of association upon which appellants base their suit has its roots in *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449 (1958), and *Bates v. Little Rock*, 361 U.S. 516 (1960). In the former case, this Court reversed a state court judgment of civil contempt against the NAACP for failure to produce its membership list during discovery. Discussing the freedom of association, this Court said:

> *Effective advocacy of both public and private points of view*, particularly controversial ones, is undeniably enhanced by group association, as this Court has more than once recognized by remarking upon the close nexus between the freedoms of speech and assembly. [Citations omitted]. It is beyond debate that freedom to engage in *association for the advancement of beliefs and ideas* is an inseparable aspect of the "liberty" assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech. [Citations omitted].
>
> . . . .
>
> It is hardly a novel perception that compelled disclosure of *affiliation with groups engaged in advocacy* may constitute as effective a restraint on freedom of association as the forms of governmental action in the

> cases above were thought likely to produce upon the particular constitutional rights there involved.

357 U.S. at 460, 462. (Emphasis supplied). This Court held that, in the circumstances of the case, disclosure of the membership list of the NAACP constituted a substantial burden on its constitutional rights with no countervailing compelling state interest.

In *Bates*, a city licensing ordinance provision required disclosure of the NAACP's membership lists. This Court struck down that provision also, stating:

> [F]reedom of association *for the purpose of advancing ideas and airing grievances* is protected by the Due Process Clause of the Fourteenth Amendment from invasion by the States.

361 U.S. at 523. (Emphasis supplied).

Thus, both *NAACP v. Alabama* and *Bates* dealt with the question of compelled disclosure of membership in a group, and "the vital relationship between freedom to associate and privacy in one's associations." *NAACP v. Alabama*, 357 U.S. at 462. *Bates*, 361 U.S. at 523. These cases thus dealt with state interference with the freedom of individuals to form groups to exercise their First Amendment freedoms of speech and petition. There were no issues relating to the structure or membership of internal bodies within these groups, or state regulation of these internal bodies. These cases did, however, establish the purpose and goals of the freedom of association, *to-wit*, "effective advocacy of both public and private points of view," "advancement of beliefs and ideas," (*NAACP v. Alabama*, 357 U.S. at 460), and "airing grievances," (*Bates*, 361 U.S. at 523). *See also Brotherhood of Railroad Trainmen*

v. Virginia State Bar, 377 U.S. 1, 5 (1964) ("to gather together for the lawful purpose of helping and advising one another in asserting the rights Congress gave them . . .").

In *Kusper v. Pontikes*, 414 U.S. 51 (1973), this Court elaborated upon the freedom of association, finding unconstitutional an Illinois statute prohibiting an individual's voting in a political party's primary election where that individual had voted in the primary election of another party within the preceding twenty-three (23) months. This Court held that the right to associate with the political party of one's choice was an integral part of the constitutionally protected freedom of association, 414 U.S. at 57, and that infringement of the right to select the party's candidate for public office in primary elections substantially infringed this freedom.

> Under our political system, *a basic function of a political party is to select the candidates for public office to be offered to the voters at general elections.* A prime objective of most voters in associating themselves with a particular party must surely be to gain a voice in that selection process. By preventing the appellee from participating *at all* in Democratic primary elections during the statutory period, the Illinois statute deprived her of any voice in choosing the party's candidates, and thus substantially abridged her ability to associate effectively with the party of her choice.

414 U.S. at 58. (Emphasis supplied).

Thus, the issues in *Kusper* involved the access of the plaintiff to the candidate selection process of her chosen political party, unquestionably one of the most important aspects of group political activity undertaken for the advancement of the group's beliefs and ideas. In the present

case, however, appellants assert no complaint relating to the selection of candidates by the Democratic Party of Washington, nor do they complain of their voice in the selection process involved. On the other hand, *Kusper* involved no issues relating to the internal organization of a political party, and created no rights with respect thereto.

Appellants rely substantially on *Cousins v. Wigoda*, 419 U.S. 477 (1975), but that reliance is misplaced. In *Cousins*, delegates elected to the National Democratic Convention pursuant to Illinois statute were not seated by the convention; instead a second slate of delegates, not selected pursuant to statute, was seated by the convention and later allowed to choose the Illinois representatives to the Democratic National Committee. The Illinois state court held that the second slate of delegates had violated a constitutional Illinois court injunction preventing the group from carrying out the functions of delegates. This Court reversed the Illinois court for reasons that are discussed *infra*, pp. 27-28.

According to appellants, *Cousins* stands for the proposition that "the right of political parties to determine the composition of their internal party organs is protected by the First Amendment." (Br.A., 11). Actually, however, the right at stake in the case was much different.

> The right of members of a political party to gather in a national *political convention in order to formulate proposed programs and nominate candidates for political office* is at the very heart of the freedom of assembly and association which has been estabished in earlier cases decided by the Court. [Citations omitted].

419 U.S. at 491. (Rhenquist, J., concurring opinion).

Thus, in *Cousins*, as in all the other cases dealing with the freedom of association, the freedom of association was applied to protect the right of groups to advocate and advance their ideas and beliefs, and the right of individuals to participate in these groups. In the political arena, this includes the right of individuals to be part of the selection of candidates and the formulation of party policy.

On the other hand, where a private organization is not engaging in these activities, it is common for government to regulate the internal structure and membership of these organizations without violating the freedom of association. For instance, RCW 23A.08.340 - 23A.08.410 regulates the composition of the boards of directors of corporations, setting minimum limits on the number of directors required (.350) and a minimum number of directors required before classification is allowed (.360). Moreover, federal statute places restrictions on who is eligible to occupy executive, governing, employee, or other positions in labor organizations. 29 U.S.C. § 504.[6] Also, 12 U.S.C. § 78 restricts those people who may become officers, directors or employees of federal banks.

In *Runyon v. McCrary*, 427 U.S. 160 (1976), Negro children sued a private school which denied admissions to Negroes, alleging violation of 42 U.S.C. § 1981. The

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6. In *United States v. Brown*, 381 U.S. 437 (1965), this Court, in a 5-4 decision, held that the part of the law making it a crime for a member of the Communist Party to hold a position in a labor union was an unconstitutional bill of attainder. 381 U.S. at 449. However, the Court said:

> Congress undoubtedly possesses power under the Commerce Clause to enact legislation designed to keep from positions affecting interstate commerce persons who may use such positions to bring about political strikes.

381 U.S. at 449-450.

school defended on the grounds that the statute denied freedom of association to the children who attended the school and their parents. This Court rejected the argument that the freedom of association allowed the school to determine who could attend it.

> In *NAACP v. Alabama,* and similar decisions, the Court has recognized a First Amendment right "to engage in association for the advancement of beliefs and ideas. . . ." That right is protected because it promotes and may well be essential to the "[e]ffective advocacy of both public and private points of view, particularly controversial ones" that the First Amendment is designed to foster.
>
> From this principle it may be assumed that parents have a First Amendment right to send their children to educational institutions that promote the belief that racial segregation is desirable, and that the children have an equal right to attend such institutions. ***But it does not follow that the practice of excluding racial minorities from such institutions is also protected by the same principle.*** . . . In any event, as the Court of Appeals noted, "there is ***no showing that discontinuance of [the] discriminatory admission practices would inhibit in any way the teaching in these schools of any ideas or dogma.***"

427 U.S. at 175-176. [Citations omitted]. (Emphasis supplied).

To support their view of the rights granted under the First Amendment, appellants rely heavily on two lower court cases, *Ripon Society v. National Republican Party,* 525 F.2d 567 (D.C. 1975), *cert. denied,* 424 U.S. 933 (1976), and *Fahey v. Darigan,* 405 F. Supp. 1386 (D. R.I. 1975). In *Ripon Society,* plaintiffs attacked the allocation formula for delegates to the 1976 National Republican Convention, arguing that the Party was bound by the one-

man, one-vote rule. The court of appeals refused to decide whether the case involved state action, 525 F.2d at 576, or whether the issue was justiciable, 525 F.2d at 578, and instead went to the application of the Equal Protection Clause. The court concluded that, assuming the clause applied, it did not require the National Convention to adhere to the one-man, one-vote apportionment, but could be satisfied if the representational scheme "rationally advance some legitimate interest of the party in winning elections or otherwise achieving its political goals." 525 F.2d at 586-587. The court then approved the delegate selection process chosen by the party.

Thus, on its facts, the case does not apply to the present case. *Ripon Society* involved application of the Equal Protection Clause, not freedom of association. Further, *Ripon Society* involved a national convention, whose functions were the same as the convention in *Cousins.*

Appellants rely upon some broad dictum by the Court of Appeals in *Ripon Society.* The language, however, was overly broad and went far beyond the issues the court had before it. The unnecessary breadth of the *Ripon Society* opinion has been recognized by other courts. *Montano v. Lefkowitz,* 575 F.2d 378, 384 (2d Cir. 1978).

In *Fahey v. Darigan,* the district court considered a Rhode Island statute requiring ward committees in the city of Providence to be made up of nineteen members. The statute, like Art. IV(G)(4) in the present case, altered the long-time practice of the Democratic Party, which was to have eleven-member ward committees. The district court held that the statute violated the freedom of association of the plaintiffs, registered Democratic voters.

The court in *Fahey v. Darigan*, however, made a fundamental error in arriving at its conclusion. It failed to make the distinction between those activities protected by the freedom of association, that is, the advocacy of ideas and beliefs and the selection of candidates, and other functions and activities of private organizations.[7] Under the cases of this Court, the former activities are protected, the latter are not, and *Fahey v. Darigan* must be rejected.

In summary, the protection of the freedom of association does not extend as far as appellants claim. It is part of the other First Amendment rights, and aimed at the advocacy and advancement of ideas. *NAACP v. Alabama*, 357 U.S. at 460. *Bates*, 361 U.S. at 523. *Kusper*, 441 U.S. at 56-57. *Cousins*, 419 U.S. at 487. *Buckley v. Valeo*, 424 U.S. 1, 15, 22, 65 (1976). It protects the Democratic Party of Washington's rights to accept those who wish to join, to formulate and advocate its policies, to choose its candidates, and to attempt to implement its beliefs as the law of the land. To extend the freedom of association beyond these activities would be inconsistent with the previous decisions of this Court and others, would carry freedom of association beyond the activities protected by the First Amendment, and would work a major change on the relationship between government and private organizations in this country.

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7. The district court's erroneous holding that the statute burdened plaintiffs' freedom of association resulted from reliance upon (a) the dictum of *Ripon Society*, 405 F. Supp. at 1398, discussed *supra*, and (b) a quote from this Court's decision in *Storer v. Brown*, 415 U.S. 724, 729-30 (1974), 405 F. Supp. at 1394-1395. In *Storer*, this Court dealt with California restrictions on ballot position and ballot access, not internal party organization. Moreover, the quote itself actually affirms the states' interests in their electoral processes, and says nothing about the freedom of association protecting internal party organization.

B. *Appellants Have Not Shown That RCW 29.42.020 Substantially Burdens Their Right to Undertake or Participate in Group Activity For the Advocacy and Advancement of Ideas Which is Protected by the Freedom of Association*

In this case, the burden is upon the appellants to demonstrate an actual substantial restraint of their First Amendment associational rights. *American Party of Texas v. White*, 415 U.S. 767, 790 (1974). The Supreme Court of Washington in this case found that the appellants had proven no substantial restraint. 90 Wn.2d at 310-312, J. S. App. A-13-15. The Supreme Court of Washington was correct, and must be affirmed.

The first claim of substantial burden made by appellants is that RCW 29.42.020 burdens their "right to determine the composition of their internal party organs." (Br.A., 11, 16). As the cases discussed above show, private organizations do not enjoy a blanket right under the First Amendment to determine the size and composition of their internal governing bodies. *Runyon*, 427 U.S. at 175-176; *Brown*, 381 U.S. at 449. Thus, on this basis alone, appellants' argument that their rights have been substantially burdened must be rejected, since they have not demonstrated that such rights exist.

A second claim of substantial burden is that the statute burdens appellants' "right to administer those groups in the way that the membership determines would best further their ideals and goals." (Br.A., 12). As discussed above, *supra* at p. 16, *Runyon* made short shrift of this contention, absolutely rejecting it. There being no such right, there is no issue as to burden.

Appellants' third allegation of substantial burden is that RCW 29.42.020 burdens "the Democratic Party's right to decide for itself how it shall be governed." (Br.A., 17). Again, appellees reject the notion that such a right exists, for the reasons already discussed.

RCW 29.42.020 does not burden any of the rights of the Democratic Party of Washington which are protected by the First Amendment. The statute delegates certain functions and responsibilities to the State Committee: To call state conventions, provide for election of national convention delegates, fill vacancies on federal or state tickets (a responsibility not involved in this case), (Br.A., 5, n. 11), and provide for the nomination of presidential electors. Appellants do not argue that the performance of any of these functions by the State Committee infringes upon their First Amendment freedom of association.

As the statute is interpreted by *King County Republican*, the State Committee also is to govern the operations of the party in the interval between the conventions, "subject to the overriding authority of the state convention." 79 Wn.2d at 212. As such, however, the State Committee is bound to follow the policies laid down by the state convention.

State law does not delegate to the State Committee the party's right to decide "what actions to take and how best to present its position," "what will be said and who will say it to the best effect," "which candidates to support by endorsement and which to ignore," "which candidates should receive funds raised by the party and which should not," "what forms of persuasion will make and keep new converts and what encouragement will strengthen the re-

solve of old stalwarts." (Br.A., 13). To the extent any such decisions are made, such decisions are made pursuant to the policies and subject to the authority of the state convention (which meets once every two years. Charter, V(F)(1), App. 14).[8]

There is no evidence in this case that any of the appellants have been prevented from joining the Democratic Party of Washington.[9] Appellants do not claim that their right to participate in the candidate selection process is burdened by the statute. There is no evidence that the policy-making activities of the Party, which are assigned in the first instance to the state convention, have in any way been burdened by RCW 29.42.020, nor is there any proof that the statute has burdened the party in its advocacy of its policies.

Such was the decision of the Supreme Court of the State of Washington in this case, 90 Wn.2d 298, 310-311, J. S. App. A-13-15, which should be affirmed by this Court. This Court should reject the argument that where state law requires an organization (the State Committee) to perform certain functions, and additional functions are

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8. There is also a provision for annual party conferences. Charter, VII(B), App. 18-19.

9. Appellants claim that they are "members" of the Democratic Party of Washington. This claim confers no special status upon the appellants apart from their positions as officers in various Democratic Party organizations, since the Democratic Party of Washington itself has no formal procedure by which individuals become members. *See*, Charter, Art. III, App. 7-8. Moreover, there are no statutory methods for becoming "members." RCW 29.18.200 declares:

> Blanket Primary Authorized. All properly registered voters may vote for their choice at any primary election, for any candidate for each office, regardless of political affiliation and without a declaration of political faith or adherence on the part of the voter.

Thus, there are no card-carrying Democrats. Br.A., 12.

voluntarily delegated to that organization, the voluntary delegation makes the body unconstitutional.

Consequently, this Court must reject the appellants' contention that their First Amendment freedom of association rights have been substantially burdened. They have no constitutional right to determine the size and composition of the State Committee, and RCW 29.42.020 does not substantially burden the rights of appellants or the parties which are protected by the freedom of association.

C. *RCW 29.42.020 Does Not Substantially Burden Any Rights of the Legislative District Representatives to Participate in the Decisions of the State Committee*

It is appellees' contention that because RCW 29.42.020 does not provide for membership on the State Committee by legislative district representatives, and because this statute does not substantially burden any freedom of association rights of the Democratic Party of Washington or the appellants as "members" thereof, that the legislative district representatives have no constitutional right to be seated on the State Committee. Should this Court decide that the statute is unconstitutional, and that Art. IV(G)(4) controls the composition of the State Committee, appellees concede that validly elected legislative district representatives would be entitled to be seated on the State Committee.[10]

Appellees reject any contention that appellants, solely by virtue of their claimed status as "members" of the Democratic Party of Washington, have any constitutional right to be seated as members of the State Committee.

10. Appellees contend that no legislative district representatives should be seated until all have been chosen (see *supra* at pp. 7-8). The superior court did not rule on this contention (R. 4).

II. Assuming Arguendo That RCW 29.42.020 Substantially Burdens Appellants' First Amendment Rights, The Statute Serves a Compelling State Interest

Because appellants have failed to show that RCW 29.42.020 substantially burdens any of their First Amendment rights, appellees need only show that the statute is reasonably related to a legitimate state interest. In this case, the statute is reasonably related to the state interest in operating its electoral system, and maintaining the integrity and stability of its electoral process, areas in which states are given broad discretion.

Assuming, *arguendo*, that this Court finds that RCW 29.42.020 substantially burdens appellants' freedom of association, RCW 29.42.020 also serves compelling state interests of the State of Washington, *to-wit:* its interest in an orderly state electoral process, its interest in the integrity, stability, and responsibility of the political system, and its interest in having a State Committee. Furthermore, the statute is precisely drawn to protect these interests.

A. *RCW 29.42.020 is Reasonably Related to Legitimate State Interests*

Because appellants have failed to show that RCW 29.42.020 substantially burdens their First Amendment rights, appellees need not prove a compelling state interest which is served by the statute.

Furthermore, there is no question that the statute is reasonably related to a legitimate state interest. One such interest which the statute serves is the state interest in the efficient and orderly operation of its electoral system.

> Moreover, as a practical matter, there must be a substantial regulation of elections if they are to be fair

> and honest and if some sort of order, rather than chaos, is to accompany the democratic processes.
>
> . . . .
>
> It is very unlikely that all or even a large portion of the state election laws would fail to pass muster under our cases . . . .

Storer v. Brown, 415 U.S. at 730. *See also Kusper v. Pontikes, supra*, 414 U.S. at 57. In *Nader v. Schaffer*, 417 F. Supp. 837 (D. Conn.), *affirmed*, 429 U.S. 989 (1976), plaintiffs challenged Connecticut's party primary system. The district court rejected the challenge, and said:

> In addition to protecting the associational rights of party members, a state has a more general, but equally legitimate, interest in protecting the overall integrity of the historic electoral process. This includes preserving parties as viable and identifiable interest groups . . . .

417 F. Supp. at 845.

Moreover, RCW 29.42.020 serves the state interest in "maintaining the integrity and stability of existing political parties, thus encouraging responsible action on their part." *Tansley v. Grasso*, 315 F. Supp. 513, 517 (D. Conn. 1970) (three-judge court). Additionally, states are given broad discretion in this area. *Tansley, supra*, at 519.

Because RCW 29.42.020 is reasonably related to the above legitimate state interests, it is not unconstitutional.

B. *RCW 29.42.020 Serves Compelling State Interests of the State of Washington*

Assuming, *arguendo*, that this Court determines that RCW 29.42.020 constitutes a substantial burden on appellants' First Amendment Rights, there can be no doubt

that the statute serves compelling state interests, and must be upheld.

There is no doubt that states have a compelling interest in an orderly and stable electoral process and political system. *Storer v. Brown*, 415 U.S. at 730, discussed *supra* at pp. 23-24. In *Raza Unida Party v. Bullock*, 349 F. Supp. 1272 (W.D. Tex. 1972), *affirmed in part, vacated in part*, 415 U.S. 767 (1974), a three-judge court held that the Texas Election Code served a compelling state interest. 349 F. Supp. at 1276. In *Affeldt v. Whitcomb*, 319 F. Supp. 69 (N.D. Ind. 1970), *affirmed*, 405 U.S. 1034 (1972) (three-judge court), these interests were again termed "compelling." 319 F. Supp. at 76.

A second compelling state interest served by RCW 29.42.020 is the state's interest in the integrity, stability, and responsibility of major political parties. *Tansley*, 315 F. Supp. at 517.

> [T]he State is particularly concerned with the parties which have demonstrated some probability of success in the general election and whose candidates may become holders of public office.

Nader, supra, 417 F. Supp. at 843.

A third compelling state interest served by the statute is the State of Washington's interest in having a state committee for political parties. In *King v. Willis*, 333 F. Supp. 670 (D. Del. 1971), plaintiff sued to have his name placed on the Delaware ballot as a candidate for President of the United States of the Vote for Jesus Party. In the case, plaintiff argued that the state requirement that all parties have a state committee was an unreasonable burden on his First Amendment rights. The court rejected the challenge.

> Finally, § 101 requires an organization, in order to qualify as a political party, to elect a State Committee at its Convention. . . . This requirement, in our view, is not unreasonable because there is a vital state interest to be served. . . . It is to promote this crucial interest in making available to the electorate some source of information of the party organization supporting such candidates that Delaware insists that they be backed by some minimal and visible State Committee organization.

333 F. Supp. at 674-675.

In the State of Washington, under RCW 29.42.020, the State Committee serves as the statewide administrator of party affairs between conventions. Rather than being a policy-making organization, the State Committee maintains party operations and initiates the Democratic Party's involvement in the electoral process by calling state conventions and providing for the election of national convention delegates and presidential electors. (RCW 29.42.020 (1),(2),(4)). In doing this, the State Committee is the glue which holds the party together between elections, and in this way contributes to the operation, stability and orderliness of the process the State of Washington has devised to conduct its electoral process. Consequently, RCW 29.42.020 serves a compelling state interest of the State of Washington.[11]

11. A further indication that statutes creating state committees serve critical state interests is that the following states have, as part of their regulation of the electoral process, also legislated as to the composition of political party state committees: Arizona (Arizona Rev. Stat., § 16-233); Arkansas (Ark. Stat., 1947, § 3.102); California (Election Code, §§ 8660-8675); Colorado (Col. Rev. Stat., § 1-14-108(2)); Idaho (Idaho Code, § 34-504); Illinois (Ill. Rev. Stat., § 46-7-8(a)); Indiana (Indiana Code 3-1-2-1); Iowa (Iowa Code, § 43.111); Kansas (Kan. Stat. Anno., § 25-3804); Louisiana (La. Rev. Stat., § 18:285(1)(a)); Maryland (Michie's Code, Article 33, § 11-2(a)(1), *et seq.*); Massachusetts (Mass. Gen. Laws, Ch. 52, § 1); Michigan (Mich. Stat. Anno., § 6.1597); Mississippi (Miss. Code, § 23-2-3(a)); Missouri (Mo. Rev. Stat., § 115.623); Montana (Montana Rev. Code, § 23-34-3(b)); Nevada (Nev. Rev. Stat., § 293.153); New Hampshire (N.H. Rev. Stat. Anno., Ch. 56, § 63); New Jersey (Rev. Stat., Title 19, Ch. 5, § 4); New York (McKinney's Con. Laws of New York Anno., § 2-102(1)); North Dakota (N.D. Century Code Anno., § 16-17-11); Ohio (Baldwin & Page's Ohio Rev. Code, § 3517.03); Oregon (Or. Rev. Stat., § 248.-075(1)); South Carolina (Code of Laws of S. Carolina, § 7-9-90); South Dakota (S.D. Cod. Laws, § 12-5-16); Tennessee (Official Tenn. Code Anno., § 2-1304); Vermont (Vt. Stat. Anno., § 17-730); West Virginia (Michie's Code, Ch. 3, Article 1, § 9); Wyoming (Wy. Stat., § 22-4-110).

In *Fahey v. Darigan,* 405 F. Supp. 1386 (D. R.I. 1975), discussed *supra* at pp. 17-18, the court held that no compelling state interest supported a state statute regulating the composition of political party ward committees. 405 F. Supp. at 1398. In arriving at its conclusion, the district court totally ignored the interests the states have in protecting and maintaining a stable political system, and this Court's decision in *Cousins v. Wigoda,* 419 U.S. 477 (1975), discussed, *supra,* at pp. 14-15.

In *Cousins,* the issue was:

> whether the Appellate Court was correct in according primacy to state law over the National Political Party's rules in the determination of the qualifications and eligibility of delegates to the Party's National Convention.

419 U.S. at 483.

This Court held that the national interest outweighed the state interest.

> But respondents overlook the significant fact that the suffrage was exercised at the primary election to elect delegates to *a National Party Convention.* Consideration of the special function of delegates to such a Convention militates persuasively against the conclusion that the asserted interest constitutes a compelling state interest. *Delegates perform a task of supreme*

> *importance to every citizen of the Nation regardless of their State of residence.* The vital business of the Convention is the nomination of the Party's candidates for the offices of President and Vice-President of the United States. . . . If the qualifications and eligibility of delegates to National Political Party Conventions were left to state law "each of the 50 states could establish the qualifications of its delegates to the various party conventions without regard to party policy, an obviously intolerable result." *Wigoda v. Cousins,* 342 F. Supp. 82, 86 (N.D. Ill. 1972). Such a regime could seriously undercut or indeed destroy the effectiveness of the National Party Convention as a concerted enterprise engaged in the vital process of choosing Presidential and Vice-Presidential candidates—a process which usually involves coalition cutting across state lines. *The Convention serves the pervasive national interest* in the selection of candidates for national office, and *this national interest* is greater than any interest of any individual State.

419 U.S. at 489-490. (Emphasis supplied).

In an opinion concurring in part and dissenting in part, Mr. Justice Powell said:

> I also agree with the Court that this case intimates no views regarding other efforts to regulate party conventions. Congressional regulation of state conventions or state regulation of state primaries or conventions for state offices raises different considerations requiring a wholly different balance.

419 U.S. at 497, n. *.

The district court in *Fahey v. Darigan,* rejected this Court's indications that compelling state interests were involved in the regulation of state political activity (including state conventions). Consequently, *Fahey v. Darigan* is incorrect.

C. *RCW 29.42.020 is Sufficiently Narrowly Drawn So As Not to Unnecessarily Restrict Appellants' Rights Under the First Amendment*

Again assuming, *arguendo,* that RCW 29.42.020 constitutes a substantial burden upon appellants' First Amendment rights, the statute is drawn sufficiently narrowly so as not to unnecessarily infringe upon these rights.

First, membership on the State Committee is, and has been since 1909, on a county-by-county basis. As such, the structure of the State Committee is coincident with the structure chosen by the State of Washington to carry out its electoral processes. Under RCW 29.04.020, the County Auditor of each county is the supervisor of virtually all primaries and elections, general or special.

Thus, if the State Committee has concerns or problems relating to the state electoral process, these problems can be handled by members having the same constituency as the government officials being dealt with. For the same reason, State Committee members can more effectively carry out in their respective counties, either with government officials or with county central committees established under RCW 29.42.030, their duties and responsibilities.

Additionally, because of the administrative and executive nature of the State Committee, limiting the membership to two per county (one man and one woman), avoids the natural and inherent problems present when large committees attempt to carry out such functions.

Thus, the statute establishing the size and composition of the State Committee serves a compelling state interest, and is narrowly drawn to achieve those interests.

CONCLUSION

The judgment of the Supreme Court of the State of Washington holding that RCW 29.42.020, as applied to the Democratic Party of Washington, is constitutional and should be affirmed.

Respectfully submitted,

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FOR ARGUMENT

IN THE

Supreme Court of the United States

October Term, 1978

No. 78-547

KAREN MARCHIONDO, *et al.*,
Appellants,

v.

NEALE V. CRANEY, *et al.*,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF WASHINGTON

REPLY BRIEF OF APPELLANTS

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TABLE OF CONTENTS

	Page
Introduction	1
Argument	3
I. The First Amendment Protects the Right of the Washington Democratic Party and Appellants to Organize and Participate in the Democratic State Committee	3
A. The Democratic State Committee Exists to Formulate and Implement Democratic Party Policies, to Promote Election of Democratic Candidates, and Generally to Govern the Washington Democratic Party Between Conventions	3
B. Freedom of Association Protects the Washington Democratic Party's Choice of Its State Committee's Composition and Democratic Party Members' Participation on That Committee	9
II. RCW 29.42.020 Substantially Burdens the First Amendment Rights of the Washington Democratic Party and its Members and the Rights of Appellant Legislative District Representatives	13
A. RCW 29.42.020 Substantially Burdens the First Amendment Rights of the Washington Democratic Party and All of Its Members	14
B. RCW 29.42.020 Substantially Burdens the Right of Appellant Legislative District Representatives to Participate in the Activities of the State Committee	18
III. RCW 29.42.020's Restrictions on the Size and Geographic Composition of the State Committee Serve No Compelling State Interest That Cannot Be Satisfied by Less Restrictive Means	19
Conclusion	23
Appendix	A-1

TABLES OF AUTHORITY

Cases — *Page*

American Communications Association v. Douds, 339 U.S. 382 (1950) 15, 16

Bates v. Little Rock, 361 U.S. 516 (1960) 9, 10, 18

Brotherhood of Railroad Trainmen v. Virginia State Bar, 377 U.S. 1 (1964) 11

Buckley v. Valeo, 421 U.S. 1 (1976) 8

Cousins v. Wigoda, 419 U.S. 477 (1975) ..... *passim*

Cunningham v. Washington State Democratic Committee, Civ. No. C 75-901 (W.D. Wash., permanent injunction entered Nov. 28, 1977) 21

Fahey v. Darigan, 405 F. Supp. 1386 (D.R.I. 1975) 9, 18

King County Republican Central Committee v. Republican State Committee, 79 Wn.2d 202, 484 P.2d 387 (1971) 4, 5, 9

King v. Willis, 333 F. Supp. 670 (D. Del. 1971) 21, 22

NAACP v. Alabama ex rel. Patterson, 357 U.S. 449 (1958) ..... *passim*

Norwood v. Harrison, 413 U.S. 455 (1973) 12

Ripon Society v. National Republican Party, 525 F.2d 567 (D.C. Cir. 1975) (*en banc*), *cert. denied*, 424 U.S. 933 (1976) 9, 10

Runyon v. McCrary, 427 U.S. 160 (1976) 12, 15

United States v. Brown, 381 U.S. 437 (1965) 15

Constitutional Provisions

U.S. Const. amend. I ..... *passim*

Statutes

RCW 29.42.020 ..... *passim*

Miscellaneous

Seattle Times, November 1, 1977 9

State of Washington, Office of Program Planning and Fiscal Management, *State of Washington Pocket Data Book* 255-58 (1976) 17

IN THE

Supreme Court of the United States

October Term, 1978

No. 78-647

KAREN MARCHIORO, *et al.*,
Appellants,

v.

NEALE V. CHANEY, *et al.*,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF WASHINGTON

REPLY BRIEF OF APPELLANT

INTRODUCTION

Appellees have argued (1) that the Washington Democratic State Committee is not a body whose activities lead to First Amendment protection for the party's choice of its composition or party members' rights to serve on it, (2) that RCW 29.42.020's interference with the composition of the Democratic State Committee imposes no substantial burden on either the party and its members or the appellants barred by the statute from serving on the state committee, and (3) that even if the statute does substantially burden First Amendment rights, it is necessary to serve a compelling state interest that cannot be satisfied by any less restrictive means. None of appellees' arguments has any merit.

The Democratic State Committee is the statewide governing body of the Washington Democratic Party between state party conventions. The state committee formulates and implements party policies, raises and distributes funds to party candidates, and carries on the entire range of political activities normally performed by the state committee of an American political party.

The Democratic State Committee's activities and functions, and party members' authorized participation on the committee, are plainly protected by the right of free political association under the First Amendment. RCW 29.42.020 substantially burdens the exercise of that right by forbidding the Washington Democratic Party from implementing its decision to add legislative district representatives to its state committee and by barring appellant legislative district representatives from taking their seats on that committee.

RCW 29.42.020's substantial burdens on First Amendment rights can be justified only if necessary to serve a compelling state interest that cannot be satisfied by less restrictive means. No state interest, compelling or otherwise, justifies RCW 29.42.020's rigid requirement that the Washington Democratic Party State Committee be composed of two county representatives from each county, no more, no less, and none other. Any state interest in the existence of the party's state committee or in its composition (although no such interest has been shown) could be satisfied by means far less restrictive than RCW 29.42.020's prohibition against legislative district representatives and rigid control of the composition of the Democratic Party's governing body.

ARGUMENT

I. The First Amendment Protects the Right of the Washington Democratic Party and Appellants to Organize and Participate in the Democratic State Committee

Appellants have shown that the association of party members for the purpose of forming and participating in the internal governing bodies of political parties is an integral part of the freedom of assembly, speech, and association protected by the First Amendment. Appellants' Br. at 11-15. Accordingly, appellants believe that the Washington Democratic Party and its members have a protected right to determine how the party's governing body—the Democratic State Committee—shall be composed, and to have duly elected party members participate in the decisions of that committee.

Appellees argue, however, that the Democratic State Committee performs no functions that give rise to First Amendment protection for the party's choice of the state committee's membership or for the right of duly-elected party members to participate in the committee's decisions. This argument rests on a substantial mischaracterization of the Democratic State Committee's functions and on a misapprehension of the nature of the right to free political association.

A. *The Democratic State Committee Exists to Formulate and Implement Democratic Party Policies, to Promote Election of Democratic Party Candidates, and Generally to Govern the Washington Democratic Party Between Conventions*

Appellants' opening brief summarized the functions of the Democratic State Committee as follows:

> Between state conventions, the Democratic State Committee is the statewide party governing body. It

> meets at least four times a year, exercises the party's policy making functions, directs the party's administrative apparatus, raises and distributes funds to Democratic candidates, conducts workshops to instruct candidates on effective campaign procedures and organization, and seeks generally to further the party's objectives of influencing policy and electing its adherents to public office.

Appellants' Br. at 4-5 (footnotes omitted). These functions plainly involve the kind of group political activity protected by freedom of association.

Appellees do not deny that the Democratic Party of Washington has charged the Democratic State Committee with the performance of these functions. Instead, appellees stress that state law does not explicitly require that some of these functions be delegated by the party to its state committee. *See* Appellees' Br. at 6. If appellees mean to suggest that the state committee is therefore somehow an apolitical entity, their theory is simply untenable. Under state law and party rule, as recognized and confirmed by the Washington Supreme Court, the state committee is an integral part of the political organization that is the Washington Democratic Party.

Even without an explicit delegation of authority from the party, the Democratic State Committee "is necessarily invested with the inherent power . . . to promulgate, subject to the overriding authority of the state convention, intraparty rules governing statewide operations of the party as a political organization during the interval between conventions." *King County Republican Central Committee v. Republican State Committee*, 79 Wn.2d 202, 212, 484 P.2d 387 (1971).

This inherent authority alone is sufficient to demonstrate that the Democratic State Committee is an integral part of the Democratic Party's political operations. Such inherent authority, however, is not the sole source of the state committee's authority and duties. As the court below expressly held, "the state convention is implicitly empowered to establish the permanent state organization of the party, create committees, [and] delegate authority . . . ." *Marchioro v. Chaney*, 90 Wn.2d 298, 313, 552 P.2d 487 (1978) (J.S. App. A—16), *quoting King County Republican Central Committee, supra*, 79 Wn.2d at 211. The Democratic State Convention has exercised this power and has adopted a party charter providing for party organization at all levels, including the Democratic State Committee, and has delegated authority within the organization, including delegations of authority to the state committee.

As the court below explicitly held, the party charter adopted by the Democratic State Convention is binding on the Democratic State Committee in the absence of valid constitutional or statutory prohibition to the contrary. *Marchioro v. Chaney, supra*, 90 Wn.2d at 313-14 (J.S. App. A—16-17). Appellees do not suggest that any statute or constitutional provision forbids the Democratic Party from delegating to its state committee the power and duty to perform those political activities normally associated with the body that governs the "statewide operations of the party as a political association between conventions." *King County Republican Central Committee, supra*, 79 Wn.2d at 212.

Article IV of the Washington Democratic Party Charter

expressly delegates policy-making and governing authority to the Democratic State Committee:

> Article IV
>
> ORGANIZATIONS OR OFFICIALS AUTHORIZED TO FUNCTION CONTINUOUSLY
>
> A. General: These organizations and officials are authorized by state statute, charter, or custom to function continuously *to govern party affairs and to make party policy* . . . .
>
> . . . .
>
> G. State Democratic Committee
>
> 1. The State Democratic Committee *shall be the governing body when the convention is in adjournment.*

Charter of the Democratic Party of Washington, art. IV (App. 8, 10) (hereinafter "Charter") (emphasis added). Article IV demonstrates beyond question that the Democratic State Committee is an integral part of the political organization of the Washington Democratic Party.

In addition to this general delegation of authority to manage the political operations of the Democratic Party's statewide organization between conventions, the charter contains specific examples of the Democratic State Committee's important policy and political functions. Article VI(B)(2) of the charter provides:

> In order to encourage full participation by all Democrats of the State of Washington with particular concern for minority groups, in the delegate selection process and in all party affairs, the State and County Democratic Party organization *shall adopt and implement affirmative action programs.*

Charter, art. VI(B)(2) (App. 16) (emphasis added).

As this Court is well aware, the term "affirmative action programs" encompasses a wide range of possible choices. The state committee's choice of affirmative action program

and the way in which it implements that program will most certainly influence the way in which the Democratic Party is perceived by the general public and the type and number of persons who choose to affiliate themselves with the party and to participate in its activities. This influence of the state committee on the composition of party membership and party meetings will in turn affect all future policy decisions and political activities of the party. In short, the authority delegated by Article VI(B)(2) of the charter gives the Democratic State Commitee a powerful role in shaping the present and future policies of the Washington Democratic Party.

Other important political functions delegated to the Democratic State Commitee pursuant to the charter's mandate that the committee organize and govern the State Democratic Party[1] include adoption of policy statements as standards for Democratic elected officials,[2] raising and disbursing monies for the continuing operation of the party,[3] and conducting candidate campaign workshops to instruct Democratic candidates on "effective campaign procedures and organization."[4]

The Democratic State Committee has not hesitated to exercise the authority delegated to it by the charter to further political objectives. In 1976 the committee raised and distributed $40,000 to various federal, state, and legislative Democratic campaigns. R., 1st Supp., 25-28. In 1977 the committee gave $15,000 to one Democratic congressional candidate and $10,000 to the Democratic Governor.

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1. Charter, art. IV(G)(1)-(2) (App. 10-11).
2. Charter, art. II(A)(1) (App. 6).
3. Charter, art. II(A)(6) (App. 7).
4. Charter, art. VII(C)(1) (App. 19).

Id. In exercising its authority to decide how and from whom to raise campaign funds and which Democratic candidates are to receive such funds, the Democratic State Committee controls the very lifeblood of the Washington Democratic Party. This activity unquestionably involves the exercise of protected First Amendment rights of expression and association. *See Buckley v. Valeo,* 421 U.S. 1, 14-23 (1976).

The Democratic State Committee's authority under the charter makes it the statewide spokesman for the party between party conventions, a power it also has not hesitated to exercise. For example, at a single meeting during the pendency of this suit, the state committee adopted seven resolutions placing the party on record as supporting or opposing statewide ballot measures on such diverse issues as limitation of gasoline taxes, establishment of a state women's commission, regulation of obscenity, and limiting appropriation of public waters.[5] Before the most recent general election, the state committee went on record opposing a highly controversial statewide ballot measure that prohibited busing of school children outside neighborhood school districts.[6]

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5. *See* Washington State Democratic Committee Minutes 3-4 (October 28, 1977). The committee voted to oppose Initiative 335 (ban on theaters and bookstores displaying obscene material); to oppose Initiative 348 (limitation on state gasoline taxes); to support Referendum 39 (voter registration by mail); to support Referendum 40 (establishing a state women's commission); to support Initiative 59 (limiting appropriations of public water); to support Senate Joint Resolution 113 (expanding district court jurisdiction); and to support House Joint Resolutions 55, 56, and 57 (regulating common carriers).

6. Washington State Democratic Committee Minutes 4 (September 23, 1978).

The broad authority exercised by the Democratic State Committee in speaking for the Washington Democratic Party is underscored by the committee's 1977 refusal, in open opposition to the party platform, to support Initiative 345, which proposed removal of Washington's sales tax on food and drugs. *See* Washington Democratic State Committee Minutes 3 (October 28, 1977); *Seattle Times,* November 1, 1977, at A14, col. 2-4 ("Tradition Discarded: State Demo Committee Opposes Food-Tax Repeal").

In short, the Democratic State Committee is, in every respect, precisely what the Democratic Party Charter and the Washington Supreme Court say it is: an integral part of the political organization of the Washington Democratic Party and that party's governing body between conventions. *See* Charter, art. IV(G)(1) (App. 8); *Marchioro v. Chaney, supra,* 90 Wn.2d at 302 (J.S. App. A—5); *King County Republican Committee, supra,* 79 Wn.2d at 211-12.

B. *Freedom of Association Protects the Washington Democratic Party's Choice of Its State Committee's Composition and Democratic Party Members' Participation on That Committee*

Where group activity is of a kind protected by freedom of association, that freedom includes the right of the group and its members to choose and implement the manner in which the group is to be organized and directed. Applicable precedent squarely holds that state action interfering with the internal organization and activity of political groups is subject to First Amendment scrutiny. *Cousins v. Wigoda,* 419 U.S. 477 (1975); *Fahey v. Darigan,* 405 F. Supp. 1386 (D.R.I. 1975); *Bates v. Little Rock,* 361 U.S. 516 (1960); *NAACP v. Alabama ex rel. Patterson,* 357 U.S. 449 (1958); *see Ripon Society v. National Republican Party,* 525 F.2d 567 (D.C. Cir. 1975) (*en banc*), *cert. denied,* 424 U.S. 933 (1976). These decisions plainly establish that the right of free political association protects the Washington Democratic Party's decision regarding the composition of its state committee and the right of duly-

elected party members to sit on that commitee. *See generally* Appellants' Br. at 11-15.

Appellees argue, however, that RCW 29.42.020's interference with the composition of the Democratic State Commitee is not subject to First Amendment scrutiny because the state committee is just an "internal body" of a political party. Thus, for example, appellees distinguish *NAACP v. Alabama ex rel. Patterson, supra,* and *Bates v. Little Rock, supra,* on the grounds that they involved only the right to be a member-at-large of political groups and not the "structure or membership of internal bodies within those groups." Appellees' Br. at 12.

On its face, appellees' theory is absurd. The First Amendment rights of political parties and their members include more than just the right to join the party and to vote on party policies in general meetings. The First Amendment protects the right to attempt to put party policies into practice by electing internal party bodies endowed with the authority and duty of implementing the party's goals and ideals. If states could control the membership of political party governing bodies, the freedom to associate as a political party would become virtually meaningless.

> Speeches and assemblies are after all not ends in themselves but means to effect change through the political process. If that is so, there must be a right not only to form political associations but to organize and direct them in the way that will make them most effective.

Ripon Society, supra, 525 F.2d at 585 (opinion for the court of McGowan, J.). Appellees' concept that the Democratic Party of Washington has no protected right to determine the composition of its internal governing bodies

makes a mockery of the rights of the party and all party members.

Appellees' theory is equally absurd if viewed from the perspective of those persons chosen to serve on a party's internal governing body, in this case the duly-elected legislative district representatives to the state committee. Under appellees' theory, a person has a protected right only to participate on the broadest level of party political activities: he has the right to speak in meetings of the general membership, but no right to act as chosen spokesman for the party and its members. The First Amendment cannot be so limited. Whatever the scope of its protections, it clearly protects the right of a person selected by his party co-members to represent them at party conferences and on higher organs of party government.[7]

Appellees' theory is not only untenable on its face, it is squarely contrary to precedent. *Cousins v. Wigoda, supra,* unequivocally rejects appellees' view of the First Amendment. In *Cousins,* the party made a choice as to who should represent Illinois party members at the party's national convention. This Court held that the party and its members had a protected right to determine who should act as representatives, and that the duly-elected representatives had a protected right to perform their party-authorized roles. *See* 491 U.S. at 487, 488-89.

Appellees attempt to limit *Cousins* by arguing that it holds protected only the right of parties to determine who

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7. The right of members to consult with each other in a fraternal organization necessarily includes the right to select a spokesman from their number who could be expected to give the wisest counsel. *Brotherhood of Railroad Trainmen v. Virginia State Bar,* 377 U.S. 1, 6 (1964).

shall participate in conventions that adopt party platforms and nominate candidates. *See* Appellees' Br. at 14-15. *Cousins* itself rejects this view. *Cousins* involved not only the participation of the Cousins delegates in the national convention, but also their participation in a post-convention caucus to elect the Illinois representatives to the Democratic National Committee. The Court held that the right of the party to determine who should participate in that caucus and the right of the Cousins delegates to serve in their authorized roles at the caucus was "analytically indistinguishable" from the right of the party to determine the composition of the convention and the right of the delegates to participate therein. 414 U.S. at 481 n. 3.

In short, appellees' theory that the First Amendment does not protect internal party governing bodies or protects only party bodies that adopt formal platforms and nominate candidates is both absurd on its face and squarely contrary to precedent.

In an attempt to construct an affirmative argument that the First Amendment does not protect the right of a political party and its members to determine the composition of party governing bodies, appellees cite *Runyon v. McCrary*, 427 U.S. 160 (1976). *See* Appellees' Br. at 15-16. *Runyon* stands for no such principle. There, a school claimed the right to engage in racial discrimination in choosing whom to admit as students. In holding this discrimination unprotected, this Court explained:

> [W]hile *"[i]nvidious private discrimination* may be characterized as a form of exercising freedom of association protected by the First Amendment . . . it *has never been accorded affirmative constitutional protections. . . ."*

427 U.S. at 176, *quoting Norwood v. Harrison*, 413 U.S. 455, 470 (1973). The right to associate for political purposes, by contrast, unquestionably is accorded affirmative constitutional protection. *E.g., Cousins v. Wigoda, supra; Kusper v. Pontikes*, 414 U.S. 51 (1973); *NAACP v. Alabama ex rel. Patterson, supra* (association for the purpose of combating racial discrimination).

The Washington Democratic State Committee is endowed with the power and authority to govern the party between conventions. As an integral part of the Democratic Party's political organization, the state committee is expressly authorized to make policy and engage in political activity. It is subject to the overriding control of the party's state convention, but its day-to-day decisions profoundly influence the way in which the party is perceived by the public, and strongly affect the extent to which the party is effective in promoting its goals and ideals and in electing candidates who share its goals and ideals. The First Amendment plainly protects the right of the Democratic Party and its members to determine the number and geographic constituencies of the members of the Democratic State Committee and the right of those appellants duly-elected as legislative district representatives to the committee to take their seats and participate fully in the committee's decisions.

II. RCW 29.42.020 Substantially Burdens the First Amendment Rights of the Washington Democratic Party and Its Members and the Rights of Appellant Legislative District Representatives

The Washington Democratic Party at its 1976 State Convention decided that the party's political activities between conventions should be directed by a state committee composed of two persons elected from each of Washington's

39 counties plus one person elected from each of the state's 49 legislative districts. *See* Charter, art. IV(G)(4) (App. 11). RCW 29.42.020, as construed by the Washington Supreme Court, prevents the party from implementing this decision by requiring that the state committee be composed of two county representatives from each county, no more, no less, and none other. The statute thus bars implementation of the party's choice and also bars individual appellant legislative district representatives from holding office on the state committee.

A. *RCW 29.42.020 Substantially Burdens the First Amendment Rights of the Washington Democratic Party and All of Its Members*

Appellees do not deny that RCW 29.42.020 prevents the party from implementing its decision regarding the composition of the party's state committee. Appellees claim, however, that the impacts of that restraint impose no substantial burden on First Amendment rights. Appellees' arguments are entirely without merit.

Appellees' primary response to appellants' showing of the substantial burdens imposed by RCW 29.42.020 is simply to deny again that the Washington Democratic Party and its members have any right to choose the composition of the party's governing body. Appellees state, for example:

> Appellants' third allegation of substantial burden is that RCW 29.42.020 burdens "the Democratic Party's right to decide for itself how it shall be governed." (Br. A., 17). Again, appellees reject the notion that such a right exists, for the reasons already discussed.

Appellees' Br. at 20; *see also* Appellees' Br. at 19 (the party has no right to determine the composition of its

internal party organs; the party has no right to administer itself in the way that the membership determines would best further their ideals and goals).

Although appellees' reasoning is somewhat unclear, they appear to base these startling assertions on a belief that *Runyon v. McCrary*, 427 U.S. 160 (1976), holds that the First Amendment does not protect the right of political parties to determine the size and composition of their internal governing bodies. *See* Appellees' Br. at 19. As discussed above, *Runyon* cannot possibly be twisted to support this interpretation. *Runyon* held that Congress can forbid a private school from rejecting potential students on the basis of their race because invidious private racial discrimination is not entitled to affirmative constitutional protection. *See* p. 12, *supra*.

By contrast, the right of political groups to govern themselves as they see fit has traditionally been recognized as deserving of affirmative constitutional protection, and the Democratic Party of Washington has engaged in no invidious discrimination in attempting to make its governing body more representative. Appellees' attempt to elevate *Runyon* into a *carte blanche* for state regulation of political party governing bodies is wholly without merit.[8]

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8. Appellees also cite, without discussing, *United States v. Brown*, 381 U.S. 437 (1965), in which the Court stated, in *dicta*, that Congress can regulate the membership of labor unions to exclude from positions of power persons who are likely to use the unions to call strikes for the purpose of overthrowing the government of the United States by force. The *dicta* in *Brown* derives from the decision in *American Communications Association v. Douds*, 339 U.S. 382 (1950), in which the Court ruled that Congress' interest in preventing strikes aimed at the overthrow of the government justified a law denying labor unions the benefit of the Labor Management Relations Act unless each officer of the union executed an affidavit stating that he was not a member of the Communist

[Footnote continued to the following page]

Appellees also assert that even if the Democratic Party and its members have a protected right to determine the composition of the Democratic State Committee, RCW 29.42.020 imposes no substantial burden on that right. *See* Appellees' Br. at 20-21. This argument simply ignores reality. RCW 29.42.020's statutory formula allows counties containing less than 9 percent of Washington's population to elect a majority of the Democratic State Committee's members, while counties containing a majority of the state's population may elect only 8 percent of the members. Under the Democratic Party's charter formula, party members in counties containing a majority of the state's population would elect 27 percent of the state committee's membership. *See generally* Appellants' Br. at 17-18. This dramatic difference between the composition of the state committee chosen by the Democratic Party and that imposed on the party by RCW 29.42.020—a difference appellees do not deny—constitutes an obvious substantial burden on the right of the party and its members to determine the composition of the party's governing body.

The protection that the First Amendment affords to a political party's choice of composition of internal party governing bodies reflects an elementary political fact: the composition of a decision-making body will influence the

Party and did not believe in or teach the overthrow of the United States Government by force. The principle of *Douds*, that a compelling interest in preventing the overthrow of the government by force can justify limiting the membership of a political group, can hardly be said to strip the Washington Democratic Party of all First Amendment protection. The protection is there. If appellees could prove that the participation of the legislative district representatives on the state committee would create a serious risk that the government would be overthrown by force, then RCW 29.42.020 might be justified. As discussed below, however, appellees suggest no such compelling state interest in support of the statute. *See* Part III *infra*.

decisions that body makes. RCW 29.42.020 forces the Democratic State Committee to be composed only of members with county-wide constituencies and imposes on that committee a pronounced rural bias. The party has ordered that the rural bias be reduced[9] and that representatives of legislative districts be included in the committee's decisions. The party's choice clearly reflects a determination that the party-mandated composition will arrive at decisions more reflective of party policy and better calculated to advance the party's interests than will a committee composed under the formula mandated by RCW 29.42.020.

The facts of this case demonstrate unequivocally the political significance of the Washington Democratic Party's choice regarding the composition of its state committee. Although the charter adopted by the 1976 Democratic State Convention imposes specific duties and responsibilities on the Democratic State Committee apart from the composition provision at issue here, that committee, as composed under RCW 29.42.020's statutory formula, flatly refused to acknowledge the binding character of any of the charter's provisions. An order of the Washington Supreme Court was required simply to persuade the state committee that it is subject to the charter. *See Marchioro v. Chaney, supra*, 90 Wn.2d at 312-14 (J.S. App. A—15-17).

9. Under RCW 29.42.020's statutory formula for the state committee's composition, "the vote of one Democrat in Garfield County has an influence in the state committee equal to the votes of nearly 400 Democrats in King County." 90 Wn.2d at 318 (J.S. App. A-21) (Horowitz, J. dissenting).

The state committee composition chosen by the Democratic Party in Article IV(G)(4) of the party charter reduces this disparity *tenfold* so that the vote of one Democrat in Garfield County will equal only the votes of approximately 44 Democrats in King County. *See* State of Washington, Office of Program Planning and Fiscal Management, *State of Washington Pocket Data Book* 255-58 (1976).

Unless the party is allowed to implement its choice of the state committee's composition, the party will have no way, short of endless litigation, of ensuring that the state committee will in fact obey the charter to which it has been declared subject.

The composition of the governing body of the Washington Democratic Party is obviously a choice of enormous political significance in the State of Washington. By preventing the party from implementing its choice in this matter, RCW 29.42.020 substantially burdens the right of the Democratic Party and all its members to free political association. *Cousins v. Wigoda, supra,* 419 U.S. at 481 n. 3, 487-88, 490 (1975); *id.* at 491-92 (Rehnquist J., concurring); *Fahey v. Darigan,* 405 F. Supp. 1386, 1398 (D.R.I. 1975); *see Bates v. Little Rock,* 361 U.S. 516 (1960); *NAACP v. Alabama ex rel. Patterson,* 357 U.S. 449 (1958). Appellees' stubborn denial that this substantial burden exists is entitled to no respect.

B. *RCW 29.42.020 Substantially Burdens the Right of Appellant Legislative District Representatives to Participate in the Activities of the State Committee*

Appellees openly admit that RCW 29.42.020 prohibits appellant legislative district representatives from participating in the decisions of the state committee. *See* Appellees' Br. at 22. Appellees deny, however, that this prohibition imposes a substantial burden on any rights protected by freedom of association. *Id.*

The concept that a person's right to free political association is not substantially burdened when the state bars him from engaging in lawful, party-authorized political activities is squarely contrary to applicable precedent. The state committee is a party body that engages in political

activities. The party has authorized appellant legislative district representatives to serve on that body and engage in those activities. If a person's First Amendment rights are substantially burdened when he is merely discouraged from acting as a simple party member, *NAACP v. Alabama ex rel. Patterson, supra,* and when he is barred from a convention and post-convention caucus, *Cousins v. Wigoda, supra,* it can hardly be said that his rights are not substantially burdened when he is totally barred from his party-authorized role on the party's governing body.

III. RCW 29.42.020's Restrictions on the Size and Geographic Composition of the State Committee Serve No Compelling State Interest That Cannot Be Satisfied by Less Restrictive Means

RCW 29.42.020's requirement that the Democratic State Committee be composed of two county representatives per county, no more and no less, substantially burdens appellants' First Amendment rights. Accordingly, the requirement can withstand constitutional scrutiny only if it is shown to be necessary to satisfy a compelling state interest that cannot be satisfied by less restrictive means. *See* Appellants' Br. at 23-24. Appellees have suggested no state interest, compelling or otherwise, that justifies a rigid requirement that the party's state committee be composed of two county representatives per county, no more, no less, and none other.[10]

Appellees' assertions of state interest consist mostly of repetitions of the litany that the state has a compelling interest in "an orderly and stable electoral process and

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10. As discussed in appellants' opening brief, appellants do not challenge RCW 29.42.020's requirement that the Washington Democratic Party maintain a state committee, and that requirement will not be affected by the relief sought here. *See* Appellants' Br. at 6-7 n. 14; *Marchioro v. Chaney, supra,* 90 Wn.2d at 302-03 (J.S. App. A–5-6).

political system," Appellees' Br. at 25, or in "the integrity, stability, and responsibility of major political parties." *Id.* The identification of a state interest in this general area, however, does not justify all regulation undertaken in the name of that interest. Appellees make no attempt to relate the requirement of "two county representatives per county" or its consequent prohibition against the seating of legislative district representatives to any legitimate state interest in stability of elections or political parties, and no such relation can be found. Appellees' litany of compelling state interests at best shows only a state interest in requiring that the party maintain a designated state committee—a requirement that is not challenged here.[11]

Appellees make only one attempt to identify a state interest that even arguably relates to the requirement that the party maintain no more, no less, and none other than two county representatives per county on the state committee. Appellees argue that because the county auditor of each county is the supervisor of virtually all primaries and elections, the state committee will relate better to the county auditors if the committee members are elected from each county. *See* Appellees' Br. at 29. This alleged state interest is insufficient on at least two independent grounds.

First, the existence of this alleged state interest, which is not even compelling on its face, is entirely unsubstantiated. Nothing in the record or Washington law even suggests that the state has a preference for (let alone a compelling state interest in) whether the state committee's contacts with county election officials are carried on by someone from the same county as the official or by some other designated party member.[12]

11. Appellees suggest later in their brief that the numerical committee size resulting from RCW 29.42.020's composition requirement is somehow important. *See* Appellees' Br. at 29. Appellants believe that states have no legitimate interest in deciding for political parties what size governing body is best for the party. Even if this interest were legitimate, however, it would justify only regulation of the maximum size of a party state committee, not RCW 29.42.020's rigid formula of two county representatives per county, no more, no less, and none other.

Second, even assuming that there were a need for the state committee to have at least one member with the same constituency as each county auditor, this need would justify only a requirement that the state committee contain *at least* one person from each county. The challenged provision, which requires that the state committee consist of two persons elected on a county-wide basis from each county, no more, no less, and none other, is substantially more restrictive than any regulation designed to meet the alleged need.

King v. Willis, 333 F. Supp. 670 (D. Del. 1971), cited by appellees in support of their claim that the challenged restrictions are necessary to satisfy a compelling state interest, shows nothing of the kind. That case demonstrates the proper sensitivity to the requirement that state interference with political party organization be the least restrictive means of satisfying state interests. In that case, a candidate for President challenged a Delaware law that required political parties to elect a state committee in order to qualify to place a candidate on the ballot. The court expressly

12. Indeed, RCW 29.42.020's composition requirements have nothing whatever to do with state electoral processes because those requirements are subject to a federal court order mandating that on the rare occasions when the committee performs state electoral functions, it must operate on the basis of one person, one vote. *See Cunningham v. Washington State Democratic Committee*, Civ. No. C 75-901 (W.D. Wash., permanent injunction entered November 28, 1977); Appellants' Br. at 5 n. 11.

noted that the size of the required state committee was not fixed by statute and was presumably left to the discretion of the party state convention. 333 F. Supp. at 674. With that in mind, the court held that the state had a crucial interest in requiring that the party maintain a permanent organization from which the voters could learn the qualifications and policies of the party and, to that end, that the state could insist that the candidate "be backed by some minimal and visible State Committee organization." 333 F. Supp. at 675.

Here, appellants do not challenge RCW 29.42.020's requirement that the Democratic Party maintain some sort of permanent statewide governing body that can provide voters with a continuing source of information on the party's qualifications and positions between conventions. Appellants do challenge the requirement that the party's governing body be composed of two county representatives from each county, no more, no less, and none other. No state interest, compelling or otherwise, requires this rigid limitation on the Washington Democratic Party's choice of the composition of its state committee.[13]

13. Appellees also cite the election laws of a number of other states in an attempt to assert that experience in other states demonstrates that control of the composition of party state committees serves a compelling state interest. Appellees' Br. at 26-27 n. 11. Appellees' citations are at best incomplete. As listed in detail in Appendix A hereto, twenty states leave the composition of party state committees entirely to the discretion of the party. Another four states require a minimum number of members, but leave the party free to add whomever it chooses. In fourteen states, state law requires that the state committee be elected on a formula based on one person, one vote—a required composition that may satisfy some compelling state interest but that most surely is not involved here. Only twelve states, including Washington, require a state committee composition that is not either left to party discretion or premised on one person, one vote.

CONCLUSION

The First Amendment protects the right of appellant party members and officers to organize and participate in the Washington Democratic State Committee. RCW 29.42.020's rigid requirement that the committee be composed of two county representatives from each county, no more and no less, substantially burdens appellants' First Amendment rights to implement the party's decision regarding the composition of its state committee and to serve in their party-authorized positions on that committee. No state interest justifies RCW 29.42.020's drastic interference with appellants' rights to free political association.

The judgment of the Washington Supreme Court holding constitutional the size and geographic composition requirements of RCW 29.42.020 as applied to the Democratic Party of Washington should be reversed.

Respectfully submitted

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APPENDIX A

The following twenty states either explicitly or implicitly leave the composition of party state committees to the discretion of the parties:

Alabama (Ala. Code tit. 17, § 16-8); Alaska (Alaska Stat. § 15.25.130); Arkansas (Ark. Stat. Ann. § 3-102); Connecticut (Conn. Gen. Stat. Ann. § 9-374 (West)); Delaware (Del. Code tit. 15, § 101(13)); Florida (Fla. Stat. Ann. § 103.091 (West)); Georgia (Ga. Code Ann. § 34-902); Hawaii (Haw. Rev. Stat. § 11-61); Kentucky (Ky. Rev. Stat. Ann. § 118.015 (Baldwin)); Maine (Me. Rev. Stat. tit. 21, § 401(2)(d)); Minnesota (Minn. Stat. Ann. § 202A.12 (West)); Nebraska (Neb. Rev. Stat. §§ 32.554, 32.556); New Hampshire (N.H. Rev. Stat. Ann. § 56:63); New Mexico (N.M. Stat. Ann. §§ 3-7-2, 3-7-3(d)); New York (N.Y. Elec. Law § 2-102 (McKinney)); North Carolina (N.C. Gen. Stat. § 163-96); Oklahoma (Okla. Stat. Ann. tit. 26, §§ 1-107, 1-108 (West)); Pennsylvania (Pa. Stat. Ann. tit. 25, § 2834 (Purdon)); Rhode Island (R.I. Gen. Laws § 17-12-2); Virginia (Va. Code § 24.1-172).

The following four states require a minimum composition of party state committees but leave the addition of members to the discretion of the party:

Massachusetts (Mass. Gen. Laws ch. 52, § 1); Nevada (Nev. Rev. Stat. § 293.153); Wisconsin (Wis. Stat. Ann. § 8.18 (West)); Wyoming (Wyo. Stat. §§ 22-4-105, 22-4-110).

The following fourteen states require that party state committees be elected on one person, one vote principles:

Arizona (Ariz. Rev. Stat. § 16-233); Illinois (Ill. Rev. Stat. ch. 46, § 7-8(a)); Indiana (Ind. Code Ann. § 3-1-2-1 (Burns)); Iowa (Iowa Code § 43.111); Louisiana (La.

Rev. Stat. § 18.285(1)(a)); Michigan (Mich. Stat. Ann. § 6.1597); Mississippi (Miss. Code § 23-1-3(a)); Missouri (Mo. Rev. Stat. §§ 115.621-.623); North Dakota (N.D. Cent. Code § 16-17-11); Ohio (Ohio Rev. Code Ann. § 3517.03 (Page)); Tennessee (Tenn. Code Ann. § 2-1304); Texas (Tex. Elec. Code Ann. art. 13.38 (Vernon)); Utah (Utah Code Ann. § 20-4-2(2)); West Virginia (W. Va. Code § 3-1-9).

The following twelve states impose a state committee composition that is neither left to the discretion of the party nor based on one person, one vote:

California (Cal. Elec. Code Ann. §§ 8660-8675 (West)); Colorado (Colo. Rev. Stat. § 1-14-108(2)); Idaho (Idaho Code § 34-504); Kansas (Kan. Stat. Ann. § 25-3804); Maryland (Md. Ann. Code art. 33 § 11-2); Montana (Mont. Rev. Codes Ann. § 13-38-203); New Jersey (N.J. Rev. Stat. Ann. 19:5-4 (West)); Oregon (Or. Rev. Stat. § 248.075(1)); South Carolina (S.C. Code § 7-9-90); South Dakota (S.D. Compiled Laws Ann. § 12-5-16); Vermont (Vt. Stat. Ann. tit. 17 § 730); Washington (Wash. Rev. Code Ann. § 29.42.020).